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A REPORT

SAYINGS AND DOINGS

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IN THE

SPECIAL CONVENTION

OF THE

DIOCESE OF NEW JERSEY,

HELD IN

TRINITY CHURCH, NEWARK,

ON WEDNESDAY, OCTOBER 27TH, 1852.

NEWARK:

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1852.

REPORT.

At the close of the usual religious services, the Bishop took the Chair as President of the Convention. The Rev. A. B. Paterson and the Rev. Mr. Boggs also took their places as Secretaries.

The Bishop then read his address to the Convention; but as it is understood that it will be printed in the Journal, it is deemed unnecessary to report it here.

REV. MR. SOUTHARD—The Committee are ready, Sir, to present their Report.

THE BISHOP—The Report of the Committee, appointed to wait on the Court of Bishops, is now in order.

Hereupon, Mr. SOUTHARD read a lengthy document, which, being in print, the Reporter did not follow.

MR. J. J. CHETWOOD—I now propose for adoption the following Preamble and Resolutions.

[As these were temporarily withdrawn, and occur under a renewal of the motion in a subsequent part of this Report, (p. —,) they are not inserted here.]

REV. MR. LOWELL—If my place have any value, Reverend Father, to myself or others, it is because it gives me opportunity to speak freely, whenever right and truth demand it. In this case, there are interests involved and principles of truth at risk, so mighty and momentous, that I could not be silent, if I would.

MR. JOEL W. CONDIT—I wish to call the gentleman to order.

It being urged that the acceptance of the Report of the Committee was the next business properly in order, the Rev. Mr. Lowell yielded; and Mr. Chetwood, having withdrawn the Preamble and Resolutions offered by him, moved, That the Report of the Committee, as read before the Convention, be now accepted. The motion was seconded.

REV. MR. SHERMAN—I have a word to say against the acceptance of this Report. There are important reasons why it should not be received, in its present shape. The Committee have manifestly transgressed their powers. They have traversed ground not contemplated in their appointment, and are reporting to us concerning matters which were never assigned to them—matters which were not even known to the Convention of July—matters which had not transpired, at the time when the Committee was raised. Their Report goes too far, and includes extraneous subject matter—I mean matter extrane-

ous to the scope of their commission—which comes not within the purview of their appointment, and which, as a Committee, they had no right to enter upon and discuss, as they have done. The Report as it stands presented, is objectionable, and ought on no account to be accepted entire.

HON. J. W. MILLER—I raise the question of order, as to whether any debate is admissible upon the simple motion to *accept* the Report. Discussion of the substance of the Report can only properly come in, when the motion occurs upon its adoption. The motion now, is not to *adopt*, but merely to *accept* the Committee's Report—that it may thus pass from their hands to the Convention. By parliamentary rules, it cannot be considered in order, to discuss what is contained in the Report or any part of it, except upon the main question of its *adoption*. The motion to merely accept is not debateable.

REV. MR. SHERMAN—It was not my purpose to enter upon the merits of the question. It is against *receiving* the Committee's Report that I object; because it goes beyond what was referred to them, and includes other matter than that which was contemplated in their appointment. And with all due respect to the opinion of the honorable gentleman who has questioned it, I believe it to be in strict accordance with parliamentary usage, when a Committee has transcended its powers by the introduction of extraneous subject matter, to meet the case at once under the motion to *accept* their Report, and exclude such irrelevant matter from the acceptance. [Cries of "order."]

MR. ARCHER GIFFORD—The objection of the Rev. gentleman is undoubtedly in order, and offered in the proper place. In my opinion he is right and perfectly in order. His objection strikes me as forcible; and if it is to have any effect at all, it must come forward now.

MR. CORTLANDT PARKER—Certainly. There can be no question about its being in order; and if the Committee have reported upon other matters than those referred to them, (as seems to be the case,) we ought not to accept these parts of their Report.

HON. WILLIAM HALSTED—I am opposed to the whole Report of the Committee—not only to what they have done over and above their instructions: but I object to the whole of it. For they have put forth sentiments in that document, which are contrary to the Canons and principles of the Church, and there are several statements in it which are not true. I want the facts to be stated as they are, and I shall oppose the acceptance of this Report altogether, because it contains what is false. [Cries of "order, order."]

MR. RYALL—I beg to suggest to the gentleman from St. Michael's, that the question is not now upon the *adoption* of the Report; it is only that we should *receive* it, in order that the Committee may be discharged. When it is proposed to *adopt* the report, which will be afterwards, then gentlemen can have an opportunity of discussing the merits of it, and rejecting it if they see fit. We must in the first place accept it; and I believe it is always customary to do so, in order to have it before us, for it is not proper to act upon it till it is accepted.

MR. J. J. CHETWOOD—The Report of the Committee must be received before it can be acted on. The whole that has been said is out of order till after the Report is accepted. Gentlemen need not be

afraid of committing themselves by voting for it; for they can vote to receive it, and then vote against adopting it. The acceptance is only a formal thing in the course of business.

HON. JAMES PARKER—I am satisfied that an acceptance of this Report is something more than a mere *form*. If we accept it, we subscribe in some sense to its sentiments, and become responsible for taking them off the hands of the Committee upon ourselves, which I cannot consent to. There are many things in the Report which I cannot subscribe to, and I claim the right to speak my mind, and give my reasons. [Cries of "question."]

THE BISHOP—It is out of order to speak upon the Report till the Convention have received it. I do not wish to cut short any discussion, in its proper place. When the motion occurs to adopt, I shall be willing to hear what may be said.

JUDGE OGDEN—I hope this will satisfy all. I can assure them that there is no intention of stifling debate. We shall willingly listen to a full discussion when the Report is taken up for adoption.

MR. WALTER RUTHERFURD—That is all we want. If it is understood that the whole subject is to be open for free discussion, we are satisfied. All we ask is for freedom of debate, and liberty to express our opinions.

THE BISHOP—That you can do, when the Report is accepted, under the motion for adoption.

REV. MR. SHERMAN—I now wish to renew the point of objection which I raised at the beginning, but from which there has been, in most of the subsequent remarks which have been made, a broad divergence. It was neither my wish nor intention, in objecting to the motion of acceptance, to open discussion upon the general merits of the Report as presented, and I am not aware of having myself so touched upon it. The ground of my objecting was this: that the Committee had transcended their powers—that they had traversed ground not assigned to them, and had incorporated in their Report matters not referred to them—matters which had not then transpired, at the time of their appointment. The receiving or acceptance of this part of their Report, is what I object to. They have clearly transcended their appointment. They have not only attended to the special business delegated to them by the Convention and discharged themselves of that, but they seem to have considered themselves as a kind of general Committee of Safety for the Bishop, with a sort of roving commission to do anything and everything that might serve his interests: and they have gone out of the way to discuss specifications in a Presentment which had not even been made when the Committee was appointed. I submit therefore that they have transcended their powers; and that so much only of their Report as relates to the subject matter referred to them, should be accepted. It is against the *receiving*, as a part of their Report these matters, which are extraneous, that I protest. To bring my objection to the point, however, I wish to move an amendment to the motion, or a substitute for it—to accept that part of the Report—(if I could be furnished with the document, I will indicate the particular matters to be excluded)—[*a copy of the Report was here handed to the speaker.*] I now move as an amendment or substitute, that that portion of the Report of the Com-

mittee as read, which precedes the first occurrence of the terms of address, "*Right Reverend Fathers*," be accepted.

THE BISHOP—The amendment is not in order.

REV. MR. SHERMAN—Is that the decision of the Chair?

THE BISHOP—It is. The motion is not in order.

REV. MR. SHERMAN—Then I appeal from the decision of the Chair, if it is ruled that such appeal is in order. The Rules of Order as established by the Convention do not formally and expressly recognize the right of appeal; and the construction which has prevailed here, has been, that upon all questions of order the decision of the Chair is final. I press the point, therefore; Is an appeal to the house, from a decision of the Chair, allowable under the Rules of Order?

THE BISHOP—An appeal is not *in order* under the Rule; but I am willing to *entertain* it, and will put the question.

REV. MR. SHERMAN—I am unwilling to urge the appeal if it is not in accordance with the Rule. I hold myself subject to the Rules of the house, and cannot press my appeal. I wish to maintain and observe the Rules of Order. And here I wish it to be noted, that it is ruled by the Chair that an appeal from its decision is not allowed by the Rules of Order here obtaining. A similar decision occurred on a former occasion and was forgotten. I hope this will be remembered.

MR. J. J. CHETWOOD—I now call for the vote on motion to accept the Report of the Committee as read to the Convention.

The Bishop put the motion, which was carried.

After the acceptance of the Report, the question occurring on its adoption,

REV. MR. LOWELL spoke as follows:

Reverend Father—I am now ready to take up again, where it was dropped, the thread of my remarks. I have been saying Sir, that certain great and living principles lay at the bottom of this discussion, and principles, I apprehend, which have been quite misunderstood, or laid aside by this Convention in its former action.

I say again, Sir, that there is one single, sole tribunal, at which the question of a Bishop's guilt or innocence, when accused, can be investigated; a single one, at which before the world, right can be done, when charges have been made against him by responsible persons. In that connection I beg the indulgence of the house, while I remind them of the quotation from the Canon law, illustrative of this settled principle: *episcopum a comprovincialibus suis judicare debere*. Has this clear principle been understood or borne in mind? Let me refer, for illustration of the contrary, to these words, occurring in the Report presented by our Committee, who apply, if not directly, yet surely, indirectly, the term "a lawful court," to this Convention or to its Committee. Behold what character is arrogated to a Committee of our own, when they are sitting to investigate the weight and worth of charges said to have been presented, impeaching the good character of our Bishop! I ought at once to say, by way of parenthesis, that I am quite ignorant of the matters said here to have been published since the sitting of the Court, by the "three Bishops." I have avoided reading them. They are no views or arguments of other men which prompted the few words from me before and these. Such terms as that above—such strange and wrong opinions as occasion them—

these urge me to maintain the right against the wrong. I now wish to present to you again, and for the purpose of enforcing it, what seems a plain and fundamental truth; and as it always is the dictate of good policy as well as of plain duty, that truth should be observed, so here especially it seems to me, that that, and that alone it is which ought to guide our action."

If now it be, as I believe it is, a fact which will not be disputed by those who are acquainted with the history and structure of the Church, that there is but that one, that single competent tribunal for trial of a Bishop charged with wrong doing, is it too much to say that in establishing another court, and claiming that its favorable award is final, there has been actual evasion of this forum, and a withdrawing of our cause from the one place to which it ought to go? Most surely, Sir, our leaving the true court for any thing which is not the true court, is a wrong done ourselves, and if we can persist in it, it is a wrong done to others.

This principle seems to be the more important to be entertained just now, because it is the very thing required, as well for the establishing the Bishop's innocence, as for God's sake, and for preserving the sacred institutions which He has set within the Church. I do not here propose to undertake discussing with exactness, the question of what constitutes a court, to show the grievous error making its way into this case. But I remember very well, that high authorities upon this floor denied, when the appointment of the "Investigating Committee" was proposed, that it would have or claim in any way, the character of a court, as I know very well, moreover, that no such character can properly belong to such a thing; now it is to prevent that character being erroneously ascribed to it, that I must ask you to consider well the actual circumstances of this case.

It seems to me that where a convention, or a committee of its forming, can sit as a tribunal, investigate a case upon its merits, examine witnesses, especially examine under oath, and then adjudicate a case upon its merits, there, if the characters of a court do not belong, it has at least been wrongfully assumed or given. It seems to me, Sir, that the very House of Bishops, except for that especial sacredness of character which God has given to it, has not more properties of a court than these same. It is no more than justice to allow to the Committee a fair construction of their action, granting, as must be granted, that all the members were honorable and high minded, with every disposition to make a fair and thorough investigation, as far as they were able; yet it is quite another thing that that Committee has been quietly, before the mind of our Convention and of the world at large, taking a character which does not, and which of right cannot belong to it—a cloak which ought to be stripped instantly from its shoulders. It has been sitting as a court, and exercising all the faculties of a court, and now, in the Report before us, behold the claim openly asserted—behold the title actually given—"a lawful court."

I have said sir, that it seems to be essential to abide by truth in this respect, not least, for preservation of the Bishop's rights. It will be readily remembered, by those who are acquainted with the history of our Church in the United States, that the principle of a Bishop's being amenable to his convention, or any thing except a Court of Bishops, as it was instantly objected to by the prelates of whom was sought

the gift of consecration in England; so was it counted a most dangerous one by the best members of the Church on this side of the water. About no single thing almost, was there so much solicitude and anxiety, when what is called "the Constitution of the Church" was just about to be adopted. Now it seems clear that if to a convention, acting by its committee, or of itself directly, be yielded such a power to try the character and conduct of its Bishops, examining witnesses under oath, disposing of the case upon its merits; it can most easily and directly assume all jurisdiction in the premises, whatever be the action of the House of Bishops. It certainly may just as well convict its Bishop by its own private, partial action, as it can in this private way acquit him; and looking upon the fearful consequences of such a gross assumption of unrighteous power, I say that on this ground, if upon this alone, the careful maintenance of right and truth is of the utmost consequence. The Bishop is not amenable to this Convention, or to any part of it, or to a committee of whatever sort, appointed by this Convention.

I do not wish to occupy your time longer than may be necessary; but in the argument of this Report there are some things to which I certainly will be no party, while I would say that I have no such thing as verbal criticism, or criticism of style to make. In the Committee's argument and authorities they halt most evidently, although they say that they have brought to the discharge of their commission whatever "learning," as well as other qualities of fitness they possessed. I do not question, Sir, that they have brought to it all the learning that they had among them, and have no doubt that they had learning quite sufficient for their purpose. It has occasioned a strange statement here. I read from this Report—"They (*the three bishops*,) say with justice and in strict accordance with the meaning of the Canons and the spirit of all ancient law, that it is only when a diocesan convention has refused to institute inquiry, which the Convention of New Jersey has never done, or has neglected it for too long a period, that they can be expected to interfere." Now, Sir, what may be the opinion of the three presenting bishops, in this or any kindred matter, I do not know from "their first letter," or from their later publications. Of what importance is it to me? of what importance is it in the case at all? and yet it is and has been quoted as a rule of action here and in several of our Conventions heretofore. The argument of our Committee I have a right to say a word to, and I wish to say that I should like a meaning for this large expression, "the spirit of all ancient law." How wide and large! it would be a long labor certainly to show what was "the spirit of all ancient law," or of one half of it—all ancient Canon law—and I will meet their large assertion therefore, with just as wide and as explicit a denial. It is well for them that they have not said "*the letter* of all ancient law," for speaking from a moderate acquaintance with the "*Corpus Juris*," I think that any one who will but run a practised eye and ready hand along the titles of that swelling code for instances, would find it difficult to get at this result, almost to find a "letter" to encourage him. But with what confidence will men express themselves about "the spirit of all ancient law." It seems to me that in this special matter, the imposing reference might better have been left untouched.

What is all ancient law? Is it our Canon of eight years ago, or

that of three years earlier? for as I remember the earliest Canon so adopted by the Church upon the matter of the accusation of a Bishop, was that adopted at Constantinople, in the year 381. In the sixth Canon of that Council, the Fathers there say somewhat thus, "that if a charge be brought against a Bishop for a wrong done by him to any other, the person of the accuser shall not be inquired into, nor shall his religion, but it shall go to trial. If accusation shall be brought in reference to some ecclesiastical subject, then the person of the accuser shall be inquired into; for if he be a heretic or unbeliever, if he be excommunicated or under censure, he is not to be heard in such a cause against an Orthodox Bishop." That may be called, Reverend Father, "ancient law;" that I believe, was the first Canon on the subject in the Church. Now if you take, in connection with that Canon, one of Chalcedon, in A.D., 451, *upon the trial of a Bishop by the Bishops of his province*, and one called "apostolic," (though not of the Apostles,) declaring, in like manner, *how Bishops are amenable to a Court of Bishops and censurable by them*, you will have all the Canons bearing directly on this subject within the first five hundred years after our Savior Christ, and there you will find nothing of Diocesan Conventions, if such things then existed, or any thing diocesan. You will there find no reference to such a thing in any possible way, direct or indirect; you will see there the character of the Court to which the Bishop is and ought to be amenable, and you will see the way in which he could be called to an account.

The question of the right to make presentment, our Committee settle by reference to "the spirit of all ancient law." They say, that in accordance with this spirit the three presenting Bishops have asserted, "that it is only when a Diocesan Convention refuses or neglects to institute investigation, that they can be expected to interfere." Now, Sir, if, as I think I may most safely say, (no person well informed being at all likely to say nay,) there is no reference whatever in the large body of the Canon law to any interference of a Diocesan Convention, or any thing diocesan, as such, about the trial of its Bishop, then is the question not to be so settled.

The truth is, that the special right in this case of either party to present, is founded on a positive enactment upon the Statute of our Church, in its III Canon of 1844. We all of course remember, that as it is provided that two-thirds of the clergy and two-thirds of the laity, in Diocesan Convention may present, so also it is said that the "presentment may be made by any three Bishops of this Church" It might to a hasty eye appear perhaps, that as the last is the shorter expression of the two, and as there is a little enlargement in expression of the first clause, therefore that carries something more of weight and of authority than what belongs to the few words in which the power is given to three Bishops. There is, however, no enlargement as to the character in which the Diocese appears, except exactly such as was required to guard with scrupulous care, that matter of presentment of a Bishop by his Diocese. It ought to have been, it was intended not to convey a privilege or preference, but to prevent a Bishop's character being left at the disposal of his Diocesan Convention, or his being driven to trial, hastily, by his Convention in case he were unpopular, as is not the case here. There is no more weight given in the words of that III Canon of 1844 to one than to the other; and

therefore should there no more weight be given, in the case, to one than to the other. They stand on positive enactment; they stand on equal terms in the enactment; and while I say this, I will also say that "*in accordance with the spirit of all ancient law*," if there were a priority of claim, it would, undoubtedly, belong to the three Bishops, and not to the Convention. If there be question made of right between the Convention and the Bishops, apart from positive enactment in that III Canon of 1844 and that of three years earlier, the prior claim is for the Bishops, and not for the Convention.

I will ask any one running his eye over the Canon law, to bear me witness how well the rights and characters of Bishops have been guarded by their Canons. A hasty and unpractised person might suppose, from one or two such glances, that any action for a Bishop's trial must be begun and ended by his brother Bishops. I do not say that this has been the case at first or last, but such expressions frequently occur in rules and glosses that it might seem, to such a hasty glance, that there be no possibility of getting a bad Bishop to his trial, unless by action of his brethren. Their equal claim to make presentment, who, until now, would ever dare deny? Their equal right, by the plain language of the Canon, as by plain common sense, who ought to question?

Now, Sir, comes our Committee, claiming credit for having done this chief and greatest wrong; *they* have succeeded—so they say—in withdrawing this case from its proper forum; doing our Bishop, in so doing, a great and manifest injustice in keeping him from vindicating, in the face of an angry world, or (had the case been so,) of a suspicious and complaining diocese—from vindicating, in whatever case—the integrity of his character. Here I would say too, that as regards the conduct of this last Committee of the Diocese, I would not question, for a single moment, that full faith should be given to its sincerity and singleness of purpose in every step that has been taken; in every argument and opinion urged; but why have we brought up again and yet again, this matter of priority of claim to make presentment, unless to put off trial by the Bishops? All this withdrawing of the case from that one Court of Bishops, by bringing in of certain secondary questions from the first, has seemed to me of the most dangerous tendency in our Committee, not only because by raising and discussing them they assail the truth, but because they are doing by this course, so great a wrong, as I conceive to their own Bishop's feelings and fair fame. If there be no tribunal fully competent, except that of the House of Bishops, or if, to put it even on a lower ground, there were in the estimation of a very large body of the Church but that one—an opinion supported by reference to all ecclesiastical authority—if there were such an opinion, as I am confident there is with a large number of those members of the Church who are agreed in every point of doctrine with our Bishop, that there is no Court except that which can rightfully set on such a case as this, (or of necessity can finally determine it,) then I conceive that a great wrong is being done to our Bishop by our Committee or this Convention thrusting itself in between him and the House of Bishops, with its side questions of right and wrong.

I know that a great deal has been said heretofore about the rights of this Diocese being invaded; but I believe that such invasion might

be fairly met and quite sufficiently repelled by any document like that entitled "Protest, Appeal and Reply," upon the Bishop's part, and by a proper action of the Diocesan Convention; but I must ask why that same sort of feeling should be still perpetuated; to what good end expressions tending to increase it should be still employed; why our Committee should lay so much stress upon the rights and claims (as they are called) of the Convention of the Diocese; for, as was said before, their doing so is keeping wide and widening still, the separation between our Bishop and that competent tribunal—that court to which, as has been said, he is amenable; to which, for his own sake, I believe fully that he ought to go. Shall this Committee be allowed to raise again these little questions, as they seem to me in comparison with the one great question? That one great question, paramount, is of doing right, and so of doing justice to the Bishop's character. So runs "all ancient law," in most exact accordance with that sentence of the Bible: *A Bishop must be blameless*—a text which shines both far and wide upon its page.

For what has been already done by the Investigating Committee, I have already said that I believe most fully that they have done this work as honorable, high-minded men; but, at the same time, if even, they had been a competent tribunal, still what has been said about the thoroughness and sufficiency of their examination is untrue. Whether, as this Report says, those who accused the Bishop ought to have been there or not, (and I would not now question the propriety of their coming, if they pleased;) yet it is manifest that they were not before the Committee of Investigation. Certain persons, of whom I scarcely know the names, and nothing more, but who, as it appears, have brought the heaviest charges against the Bishop, did not appear at all, and so, of course, they answered to no question, and therefore the investigation was, from the necessity of the case, a partial one. It was not so intended: far otherwise; but from the nature of the case it was the fact that that was an *ex parte* examination. Now, Sir, believing, as I do, that the result of that investigation was a just and true one as regards the Bishop's character; believing, as I do, that the Bishop is innocent of the charges brought against him, I ask why should we, by the raising of whatever secondary questions, keep back the Bishop from the simple issue? Keep back our Bishop from that one sufficient court, by which his case would have been finally determined and have been set at rest long years and years ago.

I have, and ever had, but one opinion in this matter—that if it had been laid, three years ago, before the House of Bishops, all difficulty would have been removed, three years ago, instead of gathering in volume and in blackness as the time went on. Is it not now exactly of the same importance to this Convention?—is it not now exactly of the same importance to our Bishop, that the right course should be adopted? If that be now, as always, the one competent tribunal, then let us waive these other questions and keep ourselves to that one single point: the satisfaction of the claims of justice for our Bishop. Why will we not *now* let the case go up on its own merits to that court, [interruption by Mr. Condit,] instead of suffering accusation still to walk the earth. [Mr. Condit thinks the gentleman wholly out of order.]

I am not out of order, Sir, for I am speaking against a course of ac-

tion proposed in this Report, as the like course of action, heretofore, is there applauded; and therefore am not willing to be interrupted. I do not wish that the Report should be adopted, for I believe that it involves approval of a course which has inflicted and will still inflict an injury upon this Convention and on the character of its Bishop, not the least. Now I take leave to ask of the Convention yet again, is it not far better, (and I am commenting upon the views presented in this Report,) will it not be better far if the case should be suffered yet to go upon its merits directly to the House of Bishops? It is because the Report of this Committee so interposes other subjects between us and the simple issue; it is because that Report raises so great and many difficulties which ought to have no place in the consideration of this most important subject; and it is finally and especially because the course which it applauds and recommends, is not the right course, the plain and simple course, which leads to simple right. It is for these causes, Sir, that I object to it.

Now, in conclusion, I would only ask, if it was ever known—I ask of all the members of the Convention who have been in the habit of dealing with innocent and honest men, (and I suppose that I may ask of all its members,) if it was ever known in their experience before, that between any innocent and honest man, swelling with the consciousness of innocence as to twice the man of common times, between him and a fair tribunal, so many difficulties and objections and obstacles were interposed as we have had thrust in between our Bishop and that simple course by which all difficulty would have been removed; between him and that court by which true, final justice could have been dispensed? I never knew of such a case as that in which an honest and innocent man, as I believe, our Bishop is—nay, as we know him to be—had so much pains and skill and effort all bestowed to keep him, when accused, from going to the competent tribunal. In former years my office brought me into both frequent and familiar intercourse with officers of the army and the navy, and I am sure that not a single one of them, if charges had been made affecting (as the phrase goes,) his character as an officer and gentleman, would have set down content for three whole days, without a trial. I cannot I am sure conceive why in this case objection should be made. The Bishop is innocent; he is charged; the House of Bishops, and they only, can acquit him.

Sir, one single difficulty may have been present in the minds of certain persons concerned in these proceedings; it may be that members of the Convention have anticipated some injustice from the supposed hostility of certain members of the House of Bishops. I do not know, Sir, how many of the Bishops are hostile to our own. Whatever may have been the case—if that had been the case, which has, perhaps, been feared—if even it were true, which God forbid, that justice cannot be fairly and equitably administered by them, still even then it is the competent tribunal. If every one of all those Bishops were opposed—aye, every single man opposed to ours on every point of doctrine, even then it is the court of God's appointment. Certainly, had I been ever asked to give advice, I would have said, Go to that court: go there and be condemned, if necessary. So, long ago, our Savior Christ went to the judgment seat, though from the judgment seat the path led only to the cross raised for Him; and

so, Sir, just as our Savior went patiently and meekly to the right tribunal, though only to a certain condemnation, even so why should not we? If it were sure that he shall fall an innocent man before his guilty judges, yet let the innocent man go to his trial, and let even wicked law, in the hands of wicked administrators of the law, should it be so, take its own lawful course. So martyrs and saints, from the earliest day of our dear faith, till now, have always followed and always have exhibited again our Savior Christ's example, who, as St. Peter says, went freely even to that tree, and Himself bare, not His but our offenses on that tree. They teach us all, these holy men, that if we, too, be buffeted in doing well, and be condemned unjustly, still it is well. Let us bear all injustice; let us meet trial, and let us be content with condemnation. [Interruption again by Mr. Condit.]

Now, Sir, in this case, our Bishop has as strong a cause as, I believe, can well be brought before an earthly court; I say a cause in which those very accusers would be the very best of witnesses in his favor: as good as if they had been summoned by himself to stand there at his side. How is it then, that we can hesitate, and why is it that we must be devising other plans; adopting other expedients, which of course can never satisfy the exigency of the case? [Judge Ogden here said that he was opposed to the gentleman's going on and speaking of the course adopted in July; it seemed to him that he was clearly out of order, when the Report was before the house for adoption. Mr. Lowell proceeded:] I have been speaking freely, Sir, but I have spoken, only, to the recommendations contained in that Report. I ever shall speak freely. At the same time, I wish to say, that if I had been out of order, it would have been quite unintentionally, and I would promptly have apologized, both to the President and the Convention; but I have said enough, Sir, and with this last interruption am content to take my seat.

At the conclusion of Mr. Lowell's remarks, the Convention adjourned, to meet at half-past 4 o'clock, P. M.

At the re-assembling of the Convention, the Bishop having taken the Chair, the house was called to order.

HON. D. B. RYALL—Mr. President, the Convention have accepted the Report of the Committee, and the question is before the Convention now, will they *adopt* it? That is the point. I know not, Sir, what was the object of the gentleman who last addressed the Convention, in raising the objection upon such a point as he did. I do not, Sir, as one of the Committee who have signed that Report, say anything in reference to it. It will speak for itself. It has been read before the Convention, and I have no doubt they have given it due consideration. I draw, Sir, however, the inference from the observations of the gentleman who last addressed the Convention, that it is the duty now of this Convention, to retrace their steps—to rescind by some resolution or by some action of the Convention, all that has been done—to again assemble by some means or other the council of the Bishops, and again for this Convention to apply to the House of Bishops for the trial of the Bishop of this Diocese. If these are not the objects which he has in view, I do not understand him.

I will say nothing further, Sir, upon that subject; but as in the course of his observations something was said in reference to the discharge of the duties of the Committee appointed by this Convention, and of the course pursued by the investigation, I wish for a few moments to correct a popular error which prevails in reference to what is called *ex parte* evidence.

It has been said by the Rev. gentleman who last addressed the Convention that the testimony of the witnesses, and the testimony taken before the Committee raised by this Convention, and who have heretofore reported to it, was *ex parte*. Now, Sir, I do not understand it to be *ex parte* testimony, in the legal acceptance of that term.

There is *ex parte* evidence taken, and such, Sir, was taken in this case when the deposition of Mr. Hays was taken at the office or before a Master in Chancery by a gentleman from St. Michael's, or under his direction, when you, Sir, the party who was impeached on that occasion, when your friends had no opportunity of attending upon that examination. That was strictly *ex parte* evidence, and was the basis, as I understand it, upon which the charge was made. But, Sir, the testimony taken before the Committee of Investigation was not *ex parte*.

Notice was given, Sir, to the accusers. Notice was given to every individual named in that presentment, or who could shed any light on the subject; a day fixed, an hour appointed, a Committee assembled, for the purpose of hearing testimony, and notice given to the accusers and to one of the accusers in particular, upon inquiries made by him, that he had a right, would be permitted, would be received before the Committee, either individually or as attorney for any of the parties, for the purpose of examining that evidence. When, Sir, testimony is taken, and all parties have a right to be heard, and neglect to be heard, I take it Sir, that the examination then will not bear the appellation of *ex parte* evidence.

Look, Sir, at this evidence. A cause of no matter how much importance to the land. The attorney for the plaintiff sends his notice to the attorney for the defendant, and the case is open; witnesses called for the purpose of establishing testimony on the part of the plaintiff. If the attorney for the defendant does not appear for the purpose of cross examining those witnesses is that received as *ex parte* evidence? No, Sir, not according to the common acceptance of the term, because they had an opportunity to do it. And the accusers in your case, Sir, were said to have been injured. All parties connected directly or indirectly were notified; every witness notified to appear, were notified of the day and time of the examination. If they neglected to appear, what, Sir, is the inference to be drawn? Why, that they could not establish the fact which it is said that they would establish.

What course, Sir, was pursued by the Examining Committee? When the witnesses were examined, they did not take part either one way or the other. The question was put to each witness, 'Will you take the oath?' The answer was, in each case, in the affirmative. They were then sworn to tell the truth, the whole truth, and nothing but the truth. The inquiry then was, 'Relate to the Committee all you know in reference to this matter.' These were witnesses who it was said would sustain the charge in many instances, and all they

said and testified to was set down in writing, and signed by each of these witnesses, and the result was the report *which has been read in your hearing*. On the report of that Committee, where was the individual who rose up and said that each and everything they said were not true? Was there any allegation or charge of this kind before the House of Bishops? None that has come to my knowledge.

The testimony of the witnesses examined, disprove the facts as has been stated in a Report just made before you. I admit they were erroneous, and if my own opinion had been carried out, I was prepared to have made a Report that there was no evidence to sustain any of these charges, but out of *pungent* objection the witnesses were examined; what ever they would say, whether for or against you, was *recorded*, and the result has been that there has been a mass of negative testimony, which from the principle upon which the Committee acted, they seemed to go by the idea that these charges had in the first place been proved. Now, Sir, take that testimony, then with this notice to all who are interested in the matter, to the accusers, yourself the party said to be injured, and all others, and compare it with the little testimony brought forward of the *ex parte* character, as published by those who made the charges against you. On the one side, Sir, there was proper evidence that all parties had an opportunity to be heard, and where the Committee did go into investigation so far as they were able to make it, it was full. On the other side there was strictly *ex parte* testimony taken in the business, in all that was done against you.

Before I sit down, I must beg leave to call the attention of the Convention and of yourself, to a matter to which my attention has been drawn for the first time. It is the reply of the three Bishops, to a paper read before the House of Bishops by the Committee.

They say, Sir, we trust it will not be considered as impertinent if we remark, that of the seven members of the Committee, the Chairman, Mr. Ryall, was a zealous supporter of the accused, and Chairman of the Committee, appointed by Bishop Doane, to examine Mr. Germain's accounts, and did not disclose Mr. Germain's illegal transfer to Bishop Doane, which was one of the charges to be investigated; and was Chairman of the Committee who reported contrary to the truth, that the Episcopal Fund was safe. He was a trustee of the College, where his children had been educated.

Mr. Harker was a creditor of the Bishop, and so interested to sustain him.

Mr. Potter was a trustee of the College, and a judgment creditor, and was having a like interest.

Mr. Whitney was a trustee of the College, and so having a like interest.

They also say that the examination made by the Committee was wholly *ex parte*.

Now, Sir, I have not, I was going to say the honor, I am not personally acquainted with those three Bishops, and I believe, Sir, that I am a stranger to them. They are three Bishops of the Church to which I belong. I am a stranger. They have charged me here Sir, with having reported contrary to the truth in reference to that Report. Where did they obtain this information? From what source I know not. I will not, Sir, here express the feelings which influence me at

this moment. May God forgive them. But, Sir, all I have to say, is that it is the first time in my life that I was ever charged with it, and that too from strangers, from Bishops in the Church who know nothing of me. Sir, I am charged here with having been a zealous supporter of yourself. What ever zeal, Sir, I may have displayed on any occasion, it has been done in what I considered the cause of truth. Where I thought there was wrong I opposed it by my voice and by my vote; where I thought it was right, whether in reference to yourself or otherwise, by my voice and vote I upheld it.

I was Chairman of the Committee appointed by Bishop Doane, to examine Mr. Germain's accounts, and did not disclose Mr. Germain's illegal transfer to Bishop Doane.

I am not aware, Sir, that Mr. Germain ever made an illegal transfer to you, Sir. It is the first time I have ever heard of it. The evidence is before this Convention. It is to be found in the Journals, and in his examination taken before the Committee. He only took the same security, Sir, of you, as from his father and brother. If there was any different I know not of it. The act was done before I was appointed. I only reported upon the accounts. I said nothing, Sir, in my Report in reference to the security of that fund. These charges are not true then, Sir. They come from three Bishops of the Church, who know nothing of me, and probably nothing of my character; and in the absence of all testimony have made an accusation which is false.

But, Sir, it is said that I was the trustee of the College, where my children had been educated. I have two sons there, and I hope at the next session to have another, and I trust they will be graduates. I prize the privilege. What is meant by these Bishops?

Because I am trustee of a College, and have two sons there, does it follow that I am incapable of doing justice to you or the Convention? Do they mean to convey the idea here, that I am under any peculiar *obligation* to that Institution? Have I not paid the fees for my sons there?

My colleague, too, Mr. Harker, was a creditor of the Bishop, and so interested in sustaining the Bishop. Sir, is Mr. Harker? I know not the fact whether it is so or not; but does that prevent him from acting and deciding as a man should act in his position? Was there any one question raised before that Committee in which there was not a unanimity of opinion?

Was it not decided at the opening, that our meeting should not be in St. Mary's Church, but that we selected from the outset a public house; from there adjourned to a Hall in the city of Burlington, that we might be above suspicion? It was proposed to go into the vestry room of St. Mary's Church, which I objected to, and a hall was kindly tendered to us by the Mayor of Burlington.

Mr. Potter was a trustee of the College, and creditor, and so having a like interest. Sir, how was he creditor? In the difficulties of the time, Sir, arising from circumstances which may be very well understood in reference to a certain course of proceedings, there was a judgment obtained against Burlington College. Mr. Potter, my colleague, with that liberality which characterizes the man, came forward and advanced the money and took an assignment of the judgment secured. Does this prevent him from being a competent person to judge, to say

whether you, Sir, were wrongly or rightly charged with offenses? I do not understand it.

But Mr. Whitney was a trustee of the College, and so having a like interest. Yes, Sir, I believe he had a like interest. We were willing, for the time, to forego, postpone, delay, adjourn the business in which each was engaged, at great sacrifice to meet day after day, and work from morning to night in the investigation of truth, because it was a matter of duty. There was nothing dark, nothing hidden. It was all put in black and white, and not one word said against it. And now, Sir, when the House of Bishops itself have decided and determined in effect, that the result of that investigation was satisfactory to them, now, at the eleventh hour, my worthy friend would rise up and say, what is to be done? The Convention to retrace its steps, go back for two or three years, convene again the House of Bishops, rescind all your steps! Why, Sir, it would be a waste of time. Sir, I will not consume any more of your time.

REV. MR. BOGGS—Mr. President, is it not customary that the Report should be laid on the table? [*The Reporter thinks something more was added, but he could not hear.*]

Now it seems to me unnecessary that this question should be pressed. For myself, I am perfectly free to confess that I do not agree with the principles laid down in the Report; neither do I like the Report itself. Nevertheless, my differing from it— [*The Reporter could not follow the Speaker.*]

We cannot go to the House of Bishops, and tell them we do not like the issue they have made. [*Not heard.*]

Instead, therefore, of now pressing its adoption, would it not be better to have this Report of the Committee laid on the table? As long as it is the property of the house, accepted but not adopted, it remains properly the Committee's. They only are responsible for the principles of Canon law which it sets forth: but if we *adopt* it, we become involved. Therefore, I suggest to the gentleman from Elizabethtown who moved the adoption of the Report, to withdraw his motion. If he refuses, I shall move to amend.

MR. J. J. CHETWOOD—I have no objection to withdraw my motion.

THE BISHOP.—I shall speak here on the perpendicular. It seems to me that there is a great deal of confusion. They speak of the paper read before the Court of Bishops as a *Report*, or the Report; but it was not a *Report*, nor the *Report*. It was just the paper which this Convention, on the 14th of July, instructed that Committee to prepare, and gave them full power in preparing, and then agreed to take it. Now—what? [*A sentence not understood.*]

It strikes me that the simple view of the subject is this: That Committee were appointed to lay before the Court of Bishops the testimony taken by the Committee of Investigation, whose Report had been made to an adjourned Convention, and adopted. They were also appointed to prepare a memorial or representation from this Convention, setting forth to the Court of Bishops the legal and canonical rights of this Diocese, and its *position in the matter*. The paper which has been read to-day comes into the body of a historical report;

and I should say that *had* the Committee stood aloof and not reported that paper, I should have expected that every member would have risen on this floor, and demanded it. Our Committee, acting with authority, have brought us an honest and faithful report, *verbatim*, which they read before the Court. Now it seems to me, that if you hesitate to adopt this paper, you take it as their effort.

I do not see any difficulty whatsoever, neither do I see how it is possible any more to refuse to record that which they *wrote* than that which they *did*. When they laid before the Court of Bishops the testimony taken, and also the canonical position and rights of the Diocese, how you can divide between these two acts, I cannot conceive. After all, when it is accepted, it goes out as the representation of that Committee, indorsed by the Court of Bishops.

I have said these words not to influence any body's mind at all, but to present the matter as I think it is. It is an act done, and an act reported. It is an act done by power, by authority; bound to be reported, bound to be *adopted*, as it stands.

The Bishop having finished his remarks, a member (whose name the Reporter could not learn,) made a few remarks. He said—The Committee did what they considered the proper thing, and have reported what they did to the Convention which delegated to them the business. It now remains for the Convention to adopt it. It now remains for us to indorse. It is set before the world as the opinion of this Convention; therefore it is incumbent on us to give it our formal sanction. Let us adopt what we have authorized, and then if gentlemen wish to bring up resolutions with different sentiments they can do so.

Mr. Walter Rutherford and Hon. Richard P. Thompson followed with a few remarks, which it was inconvenient to report on account of the noise. [*Cries of "question," "question."*]

REV. A. B. PATERSON—Let us hear those gentlemen. It is urged to lay the Report on the table as the proper course to be pursued in the order of business. I see no good reason for this. I have been told that it is not a preliminary proceeding—that it is never done. When the whole subject is fairly before us, we are called upon to meet the question and dispose of it.

JUDGE OGDEN—Perhaps, Sir, it would be proper that the debate be now opened on what may be considered the merits of the question. The motion to lay on the table, Sir, if I understand any thing about parliamentary rules, . . .

THE BISHOP—No, no! That is not the motion. The motion is, to *adopt*.

HON. WILLIAM HALSTED—Mr. President, if nobody feels disposed to discuss this question I am inclined to do it myself.

There is one position taken by the Committee, in which I concur. If I mistake not, their language reads thus: "The power to present necessarily includes the power to inquire." I concur with the Committee in that position, but I deny altogether the inference they draw from that position. I admit that if this body that appointed the Committee of Investigation had the power to present, they had the power to inquire. But I deny that the Convention that appointed that Committee had any power to present. If I understand the power to pre-

sent, it is found in the 3d Canon of the General Convention, to which Canon the Committee themselves refer; but when they refer to this Canon, they do not, I apprehend, give the purport nor the substance of the Canon. They refer to it in this way: they say, Now Canon third of '44 secures to the Convention of the Diocese to which the accused Bishop belongs, the right to make presentment, whenever the Convention shall determine by a two-thirds vote of each order that their Bishop has committed any of the offenses mentioned in the Canon, and should be put upon his trial. The Committee have stopped short at the most important and controlling feature of the Canon; and that is the proviso which I propose to read. "Provided, That two-thirds of the Clergy entitled to seats in said Convention be present, and provided also that two-thirds of the parishes in actual union with the said Convention, be represented therein."

Now, Sir, the three presenting Bishops have stated, (and I want to see the evidence to contradict their statement—because, according to my view of it, it all depends upon this); they have stated that there were not two-thirds of each order present at this special Convention, nor at either Convention. And if two-thirds of both orders were not present, (two-thirds entitled to *seats*, is the language of the Canon, not to *votes*, and the same language is carried to the Canon of New Jersey, as I understand it,) the three Bishops then take this objection to the action of the Committee; and if they are right, it appears to me to be conclusive. This is the language held by the three Bishops: The Canon requires that for such purpose two-thirds of the Clergy entitled to seats shall be present. There were 37 or 38 Clergymen so entitled in New Jersey, but only 22 were present, which is not two-thirds of 37 or 38. The Canon likewise requires that two-thirds of the parishes in union with the Convention be represented; but though there were 59 parishes in the Diocese of N. J., only 28 were so represented. It follows, then, that the Convention was never, on the occasions referred to, so constituted as to make a valid presentment of the Bishop. Now, it follows as an irresistible conclusion, that as the power to inquire only comes from the power to present, and as the power to present *only exists* practically when two-thirds of both orders entitled to seats are represented, that the whole proceeding and opening of the Committee was altogether illegal, and their action equally illegal and unconstitutional. But I think the three Bishops have conceded too much. They give to the adversary an admission to which they are not entitled. They say there were 37 Clergymen so entitled. Do they mean to say that but so many were entitled to *seats*? If I can read the *Journal*, I find that there are 60 Clergymen entitled; and I find in the Report of the Bishop to the Special Convention, he gives the number, I think, 60. I think they both concur; at any rate, if any gentleman will take the trouble to count, he will find that there are altogether 64, and 57 churches. Then I say the Bishops conceded too much, when they said there were only 37 or 38. I presume they meant 37 entitled to *vote*. But, suppose they were right, (which I do not admit,) I say there were 60 "*entitled to seats*," which is the language of the Canon. I submit, therefore, that, starting from the point upon which the Committee place themselves, that the power of the Convention to investigate, arises out of the power to present, there was

no power to investigate. Now, if the proposition were a true one, that the Convention was lawfully competent to present, suppose nineteen members or twenty of each order, out of 32, had made a recommendation that the Bishop of this Diocese be presented; and suppose that a Committee had made out charges, and the Convention decided that the Bishop should be presented for trial, would that presentment have been valid? It would not, and could not legally have been adopted. The Convention had not the power to adopt it, for they lacked the requisite two-thirds of each order. Now, if we come to the Journal of the Special Convention, we do not find the names of those persons who composed the Convention at all. The list of the Convention as it was composed on the 14th of July, 1852, was not given upon the Journal. It does not appear whether two-thirds of the Clergymen or Laymen were present. Now, if gentlemen will take the trouble to look at the Journal of the Convention of the 14th of July, they will find that the vote upon the first resolution was adopted as follows: Ayes of the Clergy, 20; of the Laity, 21; and the Nays of the Clergy, 4, and of the Laity, 5. 24 Clergymen voted, and 1 declined; 26 Laity voted, 21 in the affirmative, and 5 in the negative.

That is nothing like two thirds; it is not two-thirds of 38 or 37. But if, as I say, the Journal shows that persons entitled to seats were 60, then it falls very short. I say then, and I affirm, that from the proposition laid down by the Bishops there is no escape. That Convention had no power to do anything in regard to the matter of presenting. Therefore it was that I, when those resolutions were offered, objected to them as being illegal. [*The Reporter missed a few words.*]

While I am up, and inasmuch as the gentleman from St. Peter's has attempted to show and prove that the gentleman from St. Michael's had notice to attend and did not attend, and therefore their proceedings were not *ex parte*, I beg leave to explain to the gentleman my view of that matter.

The gentleman from St. Michael's had nothing to do with that accusation; he was not a party. After the three Bishops had made the presentment, they took the whole business out of my hands. I had no control over it. The presentment was not made in my language, nor upon the charges which I, as one of the four Laymen, had laid before them. They did not take all my charges as I desired, nor adopt my course as I wished them. They went in direct opposition. I never would have conceded that their action depended in some measure upon the action of this Convention. Their action was altogether contrary to my views. If my view about it had been adopted, no such letter would have been written to the accused, because there was no Canon to authorize it. I conceive they made a mistake, when they sent that letter. Not that they did not do what they thought best, but they made a mistake, in my humble judgment, and I do not hold myself responsible for that at all.

HON. D. B. RYALL—The presentment of the three Bishops is a presentment made upon charges by yourself and other gentlemen; and therefore, for the Committee to give notice to the Bishops of Ohio, Virginia and Maine, would have been idle.

MR. HALSTED—The gentleman has a right to take his view. I only mean to present the view which I take, and this is my view of the matter. The charges made are not my charges: they are merely the statements which we gathered from witnesses, which we embodied *in due shape*; that the Bishops undertook the business of inquiry, and after investigation, adopted just as many of the charges as they thought proper, and rejected just so many as they thought proper. When they put their names to them, they assumed the responsibility. If I had been disposed, if it had been here wished, I could not have controlled it. Therefore the gentleman is altogether mistaken when he supposes that by sending a notice to me, he was sending a notice to a party. All the party were the three Bishops; and if the party who was the real party had been notified, if the three Bishops had been notified, if they had sent notice to the three Bishops, it probably might have better answered the purpose of the Committee.

MR. RYALL—I will ask the gentleman if he did not address a note to me, asking whether he should appear as a party or counsel? and my response was, that the gentleman could be received in all of those characters.

MR. HALSTED—I did so, Sir; and the reason was, I offered an amendment to the resolution appointing and instructing the Committee, That any person might be present and cross-examine witnesses, and that any additional charges *might be investigated*: and I believe, Sir, my amendment was opposed by Judge Ogden, and was afterwards voted down. My amendment to the resolution to allow the papers to be produced, was voted down in this Convention; and I say that this Committee had no authority to admit another party, when the Convention had rejected my amendment. My object in writing that letter was for another thing. I wanted to know what powers the Committee conceived they had, and whether they would put upon the record the whole evidence they had before them, and I then held myself disposed to attend. I wanted to know exactly what the Committee thought of the powers they possessed. And since the gentleman put the question to me, I will ask him if I did not send him a list of 38 witnesses, and specify each of the charges to be proved by them?

MR. RYALL—You did; and each of those witnesses were subpoenaed.

MR. HALSTED—I gave the gentleman the names of 38 witnesses, under the specifications; and out of those 38 witnesses, only 5 were examined.

MR. RYALL—They were all subpoenaed.

MR. HALSTED—I do not deny that, Sir. The list which I gave contained the names of 38 witnesses. Among those was one written Mr. Dutton, which should have been Mrs. Dutton. They ascertained that Mr. Dutton was dead, and there ceased their efforts.

Here is a copy from the letter which I sent, containing the names of the witnesses. You will see what I call *garbling*.

It reads in this way, what is left out:

“If the Committee are desirous to make ‘a full investigation’ into the charges against Bishop Doane, and to attain truth, they may go a great way towards the accomplishment of that object, by obtaining

and laying before the Convention the following documents, as well as the evidence of the following witnesses:

SPECIFICATION I. 1st—A certified copy of the assignment of Geo. W. Doane to Garret S. Cannon and Robert B. Aertsen, dated 26th March, 1849, with the inventory of estate, real and personal, thereto annexed, together with the oaths of George W. Doane, thereto annexed.

2d—A certificate from the Clerk of the County of Burlington, of the amount of the mortgages and judgments against G. W. Doane.

3d—A certificate of judgments confessed by G. W. Doane as President of the Trustees of Burlington College, in the Supreme Court and elsewhere.

SPECIFICATION II. 1st—Obtain from Bishop Doane an exact list of his creditors at the time of his assignment, and the amount of the debts due to each. If he and Mr. Aertsen cannot make it out, let them, or the Committee, apply to Mrs. C. Lippincott, who, the Bishop says in his protest and appeal "was most intimately acquainted with all the business risks and relations of the undersigned."

2d—Obtain from the Bishop or Mr. Aertsen or Mrs. Lippincott, an account of all the sums of money expended in or about the Institutions, St. Mary's Hall and Burlington College.

SPECIFICATION III. Obtain a copy of Mr. Binney's pamphlet, and address Mr. Binney a letter requesting him to give a statement of the facts relative to the transaction between him and Bishop Doane."

This letter proceeded, giving specifications, and giving under each specification the names of the witnesses or the documents to prove it. Now, by turning to the Journal of the proceedings of the adjourned Convention, held at Newark on the 14th of July last, page 139, you will see how this letter was garbled, by the person, whoever he was, that had charge of the publication of the proceedings of the Committee of Investigation. All that is published of this letter is a list of the names of thirty-eight witnesses; and out of this number but five were examined. And yet the Convention passed a resolution saying, what the Committee themselves would not say, viz: that this was "*a full searching and honest inquiry into the allegations against the Bishop.*"

Notwithstanding all this, the gentleman has said that it was not an *ex parte* examination. The gentleman also says that the witnesses were sworn to testify the truth and nothing but the truth. I know that two of the most important witnesses only answered such questions as were put to them, and that [*a few words not understood by the Reporter.*] So much, therefore, in regard to the idea that this was not an *ex parte* examination. I consider it altogether *ex parte*, in the technical and real sense of the term.

HON. D. B. RYALL—Mr. Halsted, as Chairman of the Committee, I say that they were sworn to tell the truth, the whole truth, and nothing but the truth, and then requested to state all that they knew about the matter.

JUDGE OGDEN—I rise to a point of order. My point of order is, that we are discussing matters with which we have nothing to do. At the Convention on the 26th of May, a Committee was appointed, clothed

with power to make a certain investigation. That Committee reported their action to an adjourned meeting on the 14th of July. The records of that Convention show that the Report was accepted, adopted and approved. And that Convention appointed another Committee to wait on the Court of Bishops and lay before them the result of the Convention of the 14th of July, and also lay before the House of Bishops a statement of the position and rights of the Diocese. That Committee have done their act, and reported to us a history of their proceedings. The question is not, what have we to do with this or that? but the simple question under the motion made and seconded, is, shall we adopt their Report? I suggest that whether it will not shorten the gentleman's argument—[*the rest of the sentence was not heard.*]

HON. WILLIAM HALSTED—The learned Judge will recollect that the matter before the Convention was the Report of the Committee of this Convention. In arguing the adoption of that Report, the gentleman from St. Peter's went out of his way, to attack the Reply of the three presenting Bishops. Now, surely, when those three Bishops are attacked, and nobody is here to defend them, it cannot be out of order to speak for them. But, if this defense of the action of the Bishops is not in order, why was not the introduction of the matter by the gentleman from St. Peter's questioned, as out of order? The thing speaks for itself—it needs no comments.

However, I am perfectly willing to let that matter pass, and proceed to the remarks I propose to make in regard to the other part of this question.

As I stated before, the first reason why I cannot adopt the Report of the Committee, is that, in my opinion, it is based upon an erroneous view of the law under which they act. If I am right in that, then the whole of the Report is erroneous, and all the arguments based upon that showing, must be erroneous.

If this Convention allow this Report to be adopted, without a free expression of opinion on the subject, it will go abroad as an undisputed adoption; and consequently it must adopt also those views which the Committee have thought proper to separate and read before this Convention—for the purpose of producing an effect, I presume. It was not necessary, according to my view, that the Report should be read here. It would have answered every purpose, to have said that they had presented their Report to the House of Bishops. But inasmuch as that Report has been read here, in the presence of the assembled Convention, and of this audience, and as that Report is, certainly, very eloquently drawn, and very plausible, it will perhaps have its effect. And therefore I hold that those gentlemen who do not concur with the sentiments put forth in that paper, ought to have the opportunity of expressing their dissent. The adoption should not be pressed till we have spoken our opinions upon it.

I hold, in the next place, that when the Convention in July appointed that Committee, that that Committee had no right to present a memorial of that kind. And I go further; I say we have a right here to discuss the propriety of that Committee interfering with the regular canonical proceeding of the Court of Bishops. I say that this thing could not have been contemplated, that a Committee of this

body, or any other body, should intervene between the accused and the accusers, and say that they asked that Court not to proceed. They exceeded, in my view, wholly, the power which they possessed.

Here some person said, The gentleman will read the resolution. It was read as follows:

“Resolved, That a Committee of four clergymen and three laymen be appointed, by ballot, to lay the Report of the Committee and the accompanying evidence before the Court appointed for the trial of the Bishop, and that such committee present a written representation on behalf of this Convention, setting forth its legal and canonical position and rights, and earnestly and respectfully urging the Right Reverend Bishops to consider, whether (apart from all abstract questions of power,) it will be wise or just, or for the peace of God’s church, to proceed further upon the charges laid before them.”

Now what do they undertake to do? They were in the first place to lay the Report of the Committee before the Bishops, and then this Committee are to present a written representation on behalf of the Convention, setting forth the legal and canonical rights of the Diocese. They undertook to go on and set forth the position of the Diocese, and some of those leading canonical rights. They say that they have the first right to try; and they say that, the Bishops, having no power to try, must stop the prosecution which had been commenced in that Court, and send it back here. [*The Reporter lost a few sentences here.*]

But further, it calls earnestly and respectfully upon the Right Reverend Bishops to consider, whether apart from all abstract questions of power, they should proceed with the trial. Now I say, to construe this resolution in the way which they undertake to construe it, is to construe it in such a manner as no member had the least conception of. I venture to say, that no lawyer would allow such a construction of this Resolution. When a Bishop has been presented for trial, no third party can lawfully be permitted to intervene between the presentment and the action of the Court. There is no provision for such intervention in the Canon. The Canon reads thus. It is Canon III of 1844, Section 3.

“Upon a Presentment made in either of the modes pointed out in Section 1 of this Canon, the course of proceeding shall be as follows:

“SECTION 3. The Presiding Bishop shall, without delay, cause a copy of the Presentment to be served on the accused, and shall give notice, with all convenient speed, to the several Bishops then being within the territory of the United States, appointing a time and place for their assembling together; and any number thereof, not being less than seven, other than the Bishops presenting, then and there assembled, shall constitute the Court for the trial of the accused; he shall also at the same time, cause at least thirty days’ notice of the time and place of meeting to be given, both to the accused and to the parties presenting him, by a summoner to be appointed by him, and shall also call on the accused by a written summons to appear and answer. The place of trial shall always be within the Diocese in which the accused Bishop resides. If the accused Bishop appear before proceeding to trial, he shall be called on by the Court to say whether he is guilty or not guilty of the offense or offenses charged against him; and on his

neglect or refusal, the plea of *not guilty* shall be entered for him, and the trial shall proceed."

Here, then, the trial by a Court of Bishops is defined and restricted by the terms of the Canon. The accused has only to appear, and to plead either guilty or not guilty; and then the Canon says, *the trial shall proceed*. Now, I say, that it never could have been contemplated that any other body should get up in Court when the presentment is about to be read, and say: May it please your honors, we think you ought not to proceed with this case. We have nothing to do with it; we are outsiders; but we take an interest in the matter, and beg that you will not go on. I would ask my learned friend, the Judge, if he ever had any such occurrences as this at his Bar; and I ask him what he would do if a party not recognized by the law, should undertake to interfere with the course of justice? The learned Judge would say: What business have you here? It is pointed out by the law that the Court shall proceed; it is perfectly well understood. We do not know you as a party here at all. But now it is said that the Diocese may importune the Court of Bishops, and say, no, no, Sirs, don't try the accused; we think there is nothing in these charges, and therefore we beg you will not proceed. Why, it seems to me, that if the Committee were entirely satisfied, they are bound, as members of the Church, to have the Bishop cleared of those charges; and I say that it never was stated to the Convention, that the Bishop of this Diocese wished a trial, and that we had appointed a Committee to prevent that trial taking place; and I say they did the Bishop injustice. If he was innocent, as they believed him to be, it was their bounden duty as members of the Church, to vindicate the Bishop. Does not the world ask, does not the peace of the Church require, that the criminations of the Bishop be stopped? And it is only to be stopped by having a regular trial; and if the Bishop were innocent, and wished a trial, it was the duty of those individuals to say he shall have a trial.

I ask, who has any confidence in the Report of the Committee? Nine Bishops to eight, have said they have no confidence in it.

Mr. Halsted was here interrupted by the Bishop, who said, You have intentionally misstated the facts. There were not nine Bishops who said they had no confidence in the representation of the Committee. There was not *one* Bishop who said so. The issue was this, and upon the motion made that the Court proceed no further, eight of the Bishops voted in favor of it, and six against it. It was thus decided not to proceed. I cannot permit these false statements to go uncontradicted.

MR. HALSTED continued—The statement which I made is not false—it is true, and I will prove it. The three presenting Bishops declared before the Court that they believed the accused Bishop to be guilty, and that they stood prepared to prove their charges, and six of the Bishops were in favor of trying. Now that makes *nine*, according to my view. Eight of them voted not to proceed with the trial.

I say then, and I affirm it, that nine Bishops of the Church have declared that this trial ought to go on, and it was the duty of the Court that the trial should have proceeded. I say again, who can have confidence in the Report of the Committee? I say nothing against the gentlemen of the Committee. But what is the rule of

law? The first is to *do* justice, and the second is to satisfy the public that justice has been *done*. Now I ask the Chairman of that Committee, himself, if he as counsel, had been trying a case for one of his clients before a jury, and a gentleman situated as he is in regard to one of the parties, was summoned upon that jury, whether he would accept him as a jurymen? Most assuredly that gentleman would not; as an honorable lawyer he could not but do otherwise. Now I ask, who could have confidence in a Committee composed of the Bishop's creditors? I say that no man can have any such confidence, and that the public could not. They were an interested party, and those very motives, not at all dishonorable to those gentlemen, which made them desirous to shield the Bishop, unfitted them to judge impartially. We are all operated upon by our feelings and prejudices.

MR. RYALL—I am not the Bishop's creditor.

MR. HALSTED—No sir; but some others of the Committee I mean. Three of them are trustees, one is creditor, and all are interested

MR. POTTER—I undertake to say, Mr. Halsted, that you, nor nobody know whether I am a creditor or not.

MR. HALSTED—I state as a fact that Mr. Potter had a judgment against the College. Here is the document in my pocket, if you want to see it.

HON. R. P. THOMPSON—I rise to a question of order. Is there one single word in the gentleman's argument addressed to the point before the Convention? The subject is a simple one, and yet he is going into an attack on the Committee. Now, I do hold that it is not proper to debate in this way.

THE BISHOP—I consider that the gentleman has been out of order during the whole discussion, and most exceedingly personal, and must *decide* that he is out of order.

MR. HALSTED—I presumed that you would so decide, and therefore moved at the proper time, that we should go into Committee of the Whole.

THE BISHOP—You cannot make a motion to go into Committee of the Whole while I occupy this chair.

MR. HALSTED—I had a perfect right to reply to the gentleman from St. Peter's, and I had a perfect right to answer his attack on the three Bishops.

HON. R. P. THOMPSON—The way of settling this matter is, when a man is out of order, to pronounce it so, and the gentleman is to take his seat.

MR. JOEL W. CONDIT—In my judgment the gentleman is entirely out of order. If it therefore be proper, I move that the motion to adopt the Report of the Committee be laid on the table.

A MEMBER—I suppose the subject can be called up again hereafter for further discussion, and if so, I have no objection to lay it on the table for the present. But if it is meant to keep it out of the way, by laying on the table, I am opposed to it.

THE BISHOP—There has already been too much discussion on the subject, and it ought to stop.

The question on laying the motion to adopt on the table, is now the question.

MR. W. RUTHERFURD—That subject has not yet been debated at all: and I take it, that if it is laid on the table, it will shut off discussion altogether.

THE BISHOP—It is not in order to speak under the motion to lay on the table.

The question is now to lay on the table a motion to adopt the Report of the Committee.

MR. THOMPSON—When it is laid on the table, what becomes of it?

It lays there, and sleeps the sleep of death; and thus a Committee appointed by this Convention, instructed to go and do a certain thing, after having returned and stated to this Convention a narrative of their proceedings, shall have that narrative hushed, by having no part therein—not permitted to state to the Convention, in such a way that the Diocese may know, what they have done. I trust that no such injustice will be done to the Committee. They have a right to have their proceedings recorded among the proceedings of this Convention. It is also customary, when the report of a committee is read, to accept and adopt it. I recollect two years ago the same thing took place in this Convention; the Report of the Committee was printed in the Journals; and if this course had been taken in the present instance, all this miserable discussion would have been prevented.

The resolution to adopt the Report of the Committee was withdrawn by the mover.

HON. WM. HALSTED—I now move, That we go into Committee of the Whole.

THE BISHOP—You're out of order, Sir, you're out of order. I can't permit this interference with my rights.

MR. HALSTED—[*amid cries of "order," "order."*—I insist on it, that my motion is not out of order. It is right and proper; and I appeal to the Rules of Order adopted by this Convention, in which provision is made for going into Committee of the Whole. I repeat it, Sir; that it is not I who am out of order, but it is you who are out of order, for you have refused to put my motion which I made. [*Repeated cries of "order."*]

MR. MORTON—I move that the gentleman be expelled from this Convention. I move that we expel him.

MR. HALSTED—I should like to see them do that. I have my rights, and I shall maintain them. [*Much confusion.*]

Order being restored, Mr. J. J. Chetwood rose, and moved as follows:

"WHEREAS, the Court of Bishops, assembled on the 7th of October, instant, did, on the 15th, adopt the following Orders, to wit:

"WHEREAS, previous to the making of the presentment now before this Court, the Convention of New Jersey have investigated most of the matters contained therein, and have determined that there was no ground for presentment: Therefore, *Ordered*, That as to the matters transacted upon by said Convention, this Court do not feel themselves called upon to proceed further.

"WHEREAS, the Diocese of New Jersey stands pledged to investigate any charges against the Bishop that may be presented from every responsible source; and whereas, a Special Convention has been

called, shortly to meet in reference to the new matters contained in the presentment now before the Court. Therefore, *Ordered*, That this Court, relying upon the said pledge, will not now proceed to any further action in the premises:”

Therefore, *Resolved*, That the new matters contained in the presentment read before that Court, be referred to Jas. Potter, J. H. Wakefield, C. M. Harker, D. B. Ryall, T. H. Whitney, Henry McFarlan, and J. L. McKnight, with instructions to proceed with diligence and with all convenient dispatch, to make a full investigation of the new matters contained in the paper aforesaid, and that they report to the Convention.

Resolved, That the Committee have power to fill any vacancy occurring among its members.

Resolved, That when this Convention adjourn, they adjourn to meet in this Church at 10 o'clock, A. M., on the 1st of December.

HON. R. P. THOMPSON—Mr. President, I move to strike out all the names in the first Resolution. I have not done this without reflecting. It does seem to me proper, that this investigation should be referred to others than those who served on the former Committee. Not that I have any doubts as to the impartiality with which the same Committee who conducted the former investigation would act in this case, if it is referred to them to examine: It is entirely on other grounds—as a matter of expediency and propriety. While I make this motion, I have the most perfect confidence in the gentlemen named.

MR. CHETWOOD—I accept the amendment most cheerfully; but inasmuch as reference was made to them in the argument of the three Bishops before the Court, impeaching their veracity, and reflecting upon several of them as unfit to conduct an investigation which the Convention had referred to them; I felt it my duty, under the circumstances, that these gentlemen be retained, to show to those Bishops and to the world, that every citizen of New Jersey who knows them, has unabated confidence in them.

REV. MR. STARR—I rise to a question of order. It has already been said on this floor, that the Canon of the General Convention requires that there shall be present two-thirds of the Clergy of the Diocese entitled to seats, and lay-delegates from two-thirds of the parishes. I rise to know whether, now, this is the case. I would like, therefore, a call, to know what clergymen are entitled to seats, and how many are present; and what laymen entitled to seats, and how many are present in this Convention.

THE BISHOP—[*The opening sentence not heard.*] In the first place, nobody has here pretended that the Canon *requires two thirds*, except in case where the Convention proceeds to present. And, suppose an inquiry now to be instituted; the time for the call will be when the Committee, to which the charges are referred, report to the Convention. But this matter was fully discussed before the Court of Bishops. In addition to the discussion in the pamphlet printed, one of the Bishops stated that the strength, virtue and essence of the whole matter lay in these two things: that the Convention of the 14th of July, in order to be able to present, must have been constituted of two-thirds of each order; and then a round assertion, which was far from true, that two-thirds were not there. Now, then, upon that, the Court of

Bishops decided that the application of the two-thirds principle does not hold, except on the direct motion to present. By a unanimous decision, they decided, (the President of the Court, the Bishop of Vermont, saying that it was not at all applicable,) decided that though two-thirds were necessary in order to present, yet a vote *not* to present, only required the usual quorum; and no Bishop of the Court dissented from this opinion.

But I have a word to say further. As I proved before the Court, *there were two-thirds present* at the last Convention. The facts were not correctly stated by the three Bishops. Doubtless they had been *told*, as they stated; and their informant is, I think, now present in this Convention. I *hope*, he meant to state the thing as it was.

I could have saved the gentleman from St. Michael's a great deal of trouble, if he had come to me. Why, in regard to the Clergy, 34 are the Clergy entitled to seats in this Convention, and within two or three fractions of a man, 40 were there. I believe the gentleman is honestly in error. I would like to put him right on this and all other subjects, if he would let me. [*A few words not heard.*] Now I wish this matter understood. The two-thirds principle never will apply unless you present; and if it is applied under the question of presentment, it cannot be denied. I merely say this to save time—nothing else in the world. If anybody else could have said it, I had rather they would.

MR. ARCHER GIFFORD—I admit, Sir, that upon this occasion there is no necessity of having the number of two-thirds of each order present. It is requisite, under a certain issue stated in the Canon concerning the Presentment and Trial of a Bishop. But this is not an occasion of presentment—that is most certain. Neither is it necessary, I conceive, in regard to the business now before us.

But the matter which I have in my mind at present is a question of propriety—of right, in respect to this body. I do not conceive, Sir, that the settlement of this question is of any consequence as to the main issue. It was not necessarily involved in the real issue before the Court. I am a friend to order and strict laws; but I cannot see that this is of any consequence now, and it is not the time for it.

THE BISHOP—I laid it down only as a simple historical fact.

A MEMBER—It appears to me that the call made by the gentleman from Trenton is very summarily disposed of, and the course taken in regard to it strikes me as being wrong. Here is a member of this body, who gets up and states a fact, as required under the Canon. He asks if there is a Canonical number present. Is it not proper that such should be the case? It appears to me, Sir, that it is a very proper question.

ANOTHER MEMBER—Does the gentleman mean to make a motion, or what does he intend by his remarks? The member interrogated replied: I would simply say that I did not intend to make a motion at all. I meant what I remarked as a suggestion. I care not whether it is adopted or not.

[*Here some remarks were made between Mr. Ryall and Mr. Parker, which the Reporter was unable to note.*]

MR. BROWNING—The particular business now before us I understood to be, the appointment of a Committee of Investigation on the new charges which have been made. The motion, as first made, was

that the names of certain gentlemen who acted as Committee on the former investigation, should constitute this Committee. An amendment to strike out all the names included in the Resolution has been moved and accepted. It then stands in the shape of a Resolution to appoint a Committee, but leaving the names to be afterwards supplied. And permit me to say a single word in relation to that, whilst I am up. I have no objection to the Resolution being in blank; it is perhaps as well to first enact the Resolution, and then, by nomination, fill it up. But, to my mind, there is but one course proper for us to pursue, in adding the names to fill it up. In my view, it would be an impeachment, to appoint a *new* Committee—I mean a Committee made up of different members than those who composed the former Committee of Investigation. I think, looking upon it as I do, I think that we owe it as a matter of justice to those gentlemen. They faithfully discharged their duty when the first charges were referred to them to investigate, and the whole business ought to be completed by them.

It is said that several of the members of this Committee are creditors of the Bishop, and therefore interested in having him sustained. Now, it occurs to me, that this objection belongs to the opposite side. For creditors, usually, when they consider that their debts are hopeless, sympathise with fellow-creditors.

It is also said that some of those gentlemen are Trustees of the College, and that one of them has children in the College. But I cannot see that this should make us doubtful as to their moral integrity, or make us hesitate in entrusting this business to their hands. Looking, therefore, at the matter, in the view I take of it, there is nothing existing in the relations of the members of this Committee to the Bishop, which renders it necessary that a new Committee should be chosen.

THE BISHOP—It is not generally known, that the lay delegate from Trenton is a Trustee of Burlington College. It may be proper, however, to add, that, although he was appointed one of the Board of Trustees, he has, I believe, attended none of their meetings.

MR. HALSTED—The Bishop has made an attack on me. I am a Trustee of Burlington College—not put there, though, by my solicitation. I did attend one meeting; but I found that my attending there could be of no avail. I found that, there, as here, I was in the minority, and presumed I always should be in the minority; and therefore I stayed away—not wishing to take any kind of responsibility in its affairs. I disapproved of the policy and course which was adopted and pursued, running in debt as the Trustees did—or as the Bishop did, which is all the same; for, the Bishop, I may say, was both head and body; and what he determined for them, they did; and after a while, they left the whole of the management to him entirely. That is why I have not co-operated with the Trustees, and why I cannot.

JUDGE OGDEN—Then why don't you resign?

MR. HALSTED—I have had hints to that effect from the same quarter before. They have urged me to resign. But I don't intend to; for there may be a time—the time may come, when my presence and vote may be of use as a Trustee; and when it is, I shall be there.

MR. RYALL—I should have, Mr. President, no objection to serve on

the Committee; but I submit to the consideration of this Convention, whether it would not be better, under the circumstances, to have another lay-Committee, of equal number; for this appears to be a new complaint. The old Committee, Sir, were placed in the Committee, not by their own choice; no man upon that Committee sought the place. We saw, in the first place, that it was a season of the year in which we must make many personal sacrifices. I speak in reference to myself, Sir; I had intended to make a visit to my brother, whom I had not seen for fourteen years. But I do think, Sir, that inasmuch as this is a new charge, it is better to have a new Committee appointed.

I know very well the feelings which, Sir, the Committee entertain, in preferring to be relieved. It does not stand upon the opinion of those three Bishops. God forbid that it should!

Why, Sir, is it a sin, with these three Bishops, for a man to be a Trustee of the College? But, Sir, it is not at all improbable, you may select others, Sir, that are not thus liable to objection. I think it would be better, and I wish it to be so. I know it to be the wish of my colleagues. We have taken the responsibility upon ourselves; we have placed the result of it before the Convention; no voice has been raised against it here, and we stand upon it and upon our own integrity; not upon the opinions of those Bishops.

REV. MR. SOUTHARD—I was about to make a few remarks upon the subject of the appointment of the same gentlemen who composed that Committee before. I would not say a single word, unless I felt that, by this means, we should not only hazard, but lose forever, much of the *victory* which we have won.

It is said by the honorable gentleman who has just resumed his seat, and who argues with much feeling, that it is a *new* presentment, abstractly considered, which they will be appointed to investigate. I utterly dissent; and I think I might with safety appeal to those who were instrumental in procuring the presentment.

There are four different charges appended to the first presentment; but those charges were added, as it was confessed by the Bishops on the trial, partly to make up the case. There was the confession, that after the time of the first appointment had passed, the presentment would not be canonical and legal. Accordingly, it was done over again, with these few additions, and some slight verbal alterations. It is not, therefore, a *new* presentment. And, furthermore, it is conceded and confessed, that every charge added to that old presentment, was known before that presentment was made. I submit, therefore, that it is one case not two: One case of charge of criminality. Yes; I again repeat—It is *ONE* case. Twenty-seven charges, I believe, have been investigated now; four others have been added. Shall the Committee, then, who have had the labor, as we grant, and I may say, who have had the *honor* to investigate those charges, shall they be dismissed, and the paltry amount of those charges, got up for effect, for a purpose, forming so small a fraction of the paper, be committed to seven *other* men to investigate? Are they incompetent? Are they unwilling to complete the investigation that is proposed?

But one word more. I said that I felt that by setting aside the members of the former Committee, we should lose much of the *vic-*

tory which we had won. I feel that there might have been an *object* in the aspersions which were cast upon the character of those who constituted the Committee. I feel that, whether you grant, directly or indirectly, that the members of the Committee are incompetent to examine these charges, you destroy the confidence of men in the Report which they have already made. You take away their sincerity when they said that they were satisfied. You practically allow that they were unworthy, or at least incompetent; that you had better appoint better men. There are no better men. The majority of the Court of Bishops have decided that their investigation was impartial and complete, so far as the ends of justice could require. Shall we let, then, the opposition, who scruple not to cast aspersions upon individual character, shall we let the opposition triumph, in compelling us to substitute on that Committee other men in the place of those who have been tried? [*A few words not heard.*] And I appeal, now, whether or not the interest of all concerned—whether that high, straight-forward, manly course, which has been pursued throughout this investigation, is not to be affected by their retiring from this Committee? I ask, if they have already won your confidence, whether that confidence should not require that you appoint them to finish the investigation? I would urge you to be consistent in this matter, and maintain your ground, by appointing the same Committee. Stand to it, then, like men assailed. Stand to it, with that confidence which you express. The Church calls for it. I ask for it, individually, as a member of this Diocese, assailed and torn, as far as it can be, by dissensions. I ask it, for that Right Reverend Father. I ask it, for the Church.

MR. WALTER RUTHERFORD—Mr. President: As I understand, from the Report we had from the Committee this morning, and also from representations which you made to us this morning, that it was your wish, to be tried by the Court of Bishops, and that in urging the memorial of the Committee that the Court should not proceed, you were not arguing for yourself, but only for the rights of the Diocese; and as I understand that the position taken by the Committee who represented the Convention of New Jersey before the Bishops, was a bar against their proceeding with the trial, and stood between the Bishop and the Court; I therefore offer, as a substitute for what has been moved, the following Preamble and Resolution:

Whereas, It appears by the Report of a Committee appointed by this Convention, to investigate certain charges against the Right Rev. George W. Doane, Bishop of this Diocese, that only a portion of the witnesses were examined before them, and scarcely any on whose evidence the presentment rested: And,

Whereas, The Right Rev. Bishops of Ohio, Virginia and Maine, possessing this Report of the Committee, and the evidence taken by themselves, have published a document under their official signatures, publicly proclaiming their belief that the Right Rev. George W. Doane, Bishop of this Diocese, is guilty of certain grave and serious offences, impugning his moral character, and tending to impair his usefulness, and declaring that they stand full-handed with the proof of the charges in such presentment:

Resolved, That the Right Rev. George W. Doane, Bishop of this

Diocese, be earnestly solicited to demand from his Peers a trial of these charges, in order that public opinion may be satisfied, and his character sustained in the Church.

THE BISHOP—I have been consecrated a Bishop of the Church of God, and am not to be instructed by laymen. I cannot believe—(it would belie the honored *name* he wears)—I will not believe, that the mover of this Resolution *intends* it as a personal insult. [*There were some further remarks here; but the utterance of the speaker became so hurried, that the Reporter was unable to follow.*]

REV. DAVID BROWN here read a speech of considerable length, which is not reported, as reliance was placed upon the manuscript being furnished, which has failed.

MR RUTHERFURD—As I understood from the Report read by the Committee who went before the Court of Bishops, they took that course for the independence of the Diocese, and to protect their rights; and that apart from the action of the Convention, which stood as a bar between the Bishop and the Court of Bishops, you were not only willing, but desirous, to have a trial. The position taken by the Convention, it seems, and the course pursued by the Committee, was all that prevented the trial from proceeding. Well: my Resolution goes merely to remove this, that the Bishop may be left free to act for himself, according to the dictates of his own judgment, as he has expressed it.

THE BISHOP—The Committee made some remark about the Bishop desiring a trial. I went to the Court of Bishops, to be tried. I was not tried: nor even called upon to plead "GUILTY," or "NOT GUILTY." The Bishops, for sufficient reasons, laid before them by the Committee of this Convention, decided that they would proceed no further—that there should be no trial—that they would not entertain the charges—though the Presenters urged it.

Now this gentleman from Jersey City puts together these two or three things as the basis of a Resolution, which he moves, That this Convention urge me to demand a trial, to satisfy public opinion, and sustain my character! I put such a Resolution! Never—never—never! Did anybody ever hear of a layman calling upon a Bishop to put a proposition like that? So far as it concerns me, that the Convention call upon me to request to be tried, I shall do no such thing. It's too absurd to talk about. When I am arraigned, and the question of "*GUILTY or NOT GUILTY*?" is asked, I will answer it. I will not go through the absurdity of proposing such a Resolution here. [*A few other remarks, which the Reporter could not follow.*]

I speak with perfect respect, with perfect kindness; but I must speak freely. I cannot permit such interference with my rights—with what belongs to my office as a Bishop. I have that sense of responsibility—that which no other man in this house has. I presume the gentleman will not urge his Resolution. I may assure the gentleman, I wish he had asked me in private if he thought there was occasion for such a singular request. But it has been brought out here in such a way that I must express some very small part of my feelings.

A Bishop has obligations which no man of his Diocese can understand or enter into. His position is altogether separate and peculiar.

He stands by himself. He is a king. There are points in which no counsel can be permitted to come in.

MR. RUTHERFURD—I would beg leave to say, as there has been no imputation against me of hostile or unworthy motives, I would merely say that I understood the position of the case to be this: That the Committee placed great stress upon the rights of the Diocese—that the course taken by them in regard to the trial, which resulted in defeating it, was independent of yourself—and that all that stood in the way and prevented the trial, was the action of this Convention. I also understood that you, on behalf of the Committee, as representing the Diocese and its rights, that you considered, in the appeal that you there made, that you stood independent of *yourself*, and were acting for *them*—that by these means, or by action of theirs, the Committee of this Convention had interfered with your free action, in regard to having a trial upon the charges made against you.

HON. JAMES PARKER—I ought to begin perhaps, with an apology to the Convention, for troubling them at this time, after so much time has been spent in the discussion of small matters before them.

You will recollect that when this Report was brought in, I suggested the propriety of striking out that part of it which was composed of the arguments made use of by the Committee before the House of Bishops, anxiously requesting them not to try the cause submitted to them by the three Bishops. If my suggestion had been followed, we would have avoided an irritating debate. I am glad only on one account, that my suggestion did not take place; because if it had, I and this Convention would have been prevented from hearing the plain, forcible argument of the gentleman from Christ Church, in Newark, in which the question is placed in so complete and forcible a light, that all must see that the only proper way to put an end to this troublesome affair, was to have the trial go on before the Court of Bishops. In any observations that I may make, I wish to preface them by the declaration that I do not undertake to say that the charges made by the three Bishops are true, nor if they were true do I undertake to say what is the degree of moral or legal guilt that would follow from the proof of the facts.

The Bishop is charged with these offenses; they may be true or untrue; but, Sir, I do say that the public mind is imbued with the idea that the Bishop of this Diocese is charged with facts that destroy his character as a Bishop before the community, and there can be no cure for that but a trial.

What is the investigation of this Committee? Whoever these gentlemen are they are the personal friends of the Bishop; they have formed and expressed opinions upon the subject, and could they convict the Bishop? No; nor could they sufficiently clear him; they constituted a Court by themselves. It was a self-constituted Court; and when the witnesses were summoned, the most important of them said that it was not a proper Court, and they would not go; and in the face of that absent testimony the Committee have reported that the Bishop was *not guilty*. Now, Sir, if I had been an enemy to the Bishop—which I am not, and I trust the Bishop knows it—if I had been an enemy to the Church, I should wish the thing to take the very course it has taken. Eight of the Bishops have acceded to our

request, and said they would not try the Bishop. As a humble individual, a layman, I say it—I say that the Church is suffering every day; and that the further we progress, and the more we continue to act, the more will the Church suffer. It has been remarked by the honorable President, that it would be a very strange thing that a man charged with crime was solicited to demand a trial.

Well, now, I believe that in the army or navy, the least impeachment is followed by a request to be tried. I think I have known some Bishops who have requested to be tried, and why should any one shrink from it? [*A few words not heard.*]

Well, Sir, if the rule here is to be *sic volo, sic jubeo*, if the Bishop is to rule the Convention in this absolute fashion, we had better put on our hats and go home. I do not think it is an indelicate question or an improper one. I understand that the Bishop of this Diocese, when we ask him to put a question, says he will not be dictated to. Now, if that is to be the rule, I am not disposed to waste time in discussing propositions until I know that the President will put them.

HON. J. W. MILLER.—Mr. President, I did not intend, Sir, to take any part in the debate to-night; but these questions have assumed such a shape, that I can no longer be quiet in respect to myself, or with regard to what I consider the rights and interests of the Clergy, Laity, and Bishop.

In July last, Sir, when I was absent, I was appointed one of a Committee, consisting of three clergy and two laymen, to do what, Sir? To perform a duty imposed upon us by this Diocese, instructing us to carry this Resolution to a Court of Bishops which should be assembled under the Canon of the Episcopal Church, and in a respectful manner say to them, that the charges which they were about to try, had been investigated by this Convention with reference to the presentment; and upon that investigation, fully made by a General Committee and reported to a Convention, sanctioned by this Convention; upon that investigation they found no cause of presentment of the Bishop of N. J. upon these charges. You did not stop there, Sir, and my honorable friend from Amboy was, I think, a member of that Convention.

HON. JAMES PARKER—I was not.

MR. MILLER—Were you not appointed?

MR. PARKER—Yes, sir, but I did not attend it.

MR. MILLER—The proceedings of that session were the action of Convention, the same as though every member chosen had been present. I mean to say this: this is a legal Convention in the Church; and our order and proceedings here, bind every true member of the Church; and those who are not present are equally bound by it, and they have no right to find fault with it.

MR. PARKER—Well, I do find fault with it, and I claim the right to.

MR. MILLER—Now, look at the consequences which have flowed from that resolution. There are deep, responsible transactions, affecting time and eternity, which never can be taken back. But, Sir, I was appointed as a member of a Committee to perform a solemn duty. Now, if I understand the honorable gentleman, he says that the manner in which we performed that duty does not meet his approbation. The Committee presented it to the Court of Bishops. Along

with it, what did we do? We presented an argument in writing showing reasons why the Bishop ought not to be tried by the Court. Now, we may not have performed that duty according to the opinions or tastes of gentlemen here. But this Committee was thrown upon their own responsibility. This Committee were to act as they thought proper. Was it my duty to consult the honorable gentlemen from Trenton or Amboy?

We were next earnestly to request the Court of Bishops not to proceed any further with those charges, because they had been investigated, and been declared not true, by this Convention. What was the result? They considered the action of the Diocese of New Jersey; they examined the evidence with reference to those charges, and decided by a solemn vote, that that investigation was an honest one, and the charges without foundation. They decided *that*. Whose fault was it that all the witnesses were not examined?

MR. GIFFORD—Will the gentleman let me ask him what the question is?

MR. MILLER—I do not know, Sir. [*Laughter.*] I am answering, now, some *objections* thrown out here. I wish to state simply to this Convention, that we have done nothing more than carry out the order of this Convention. We presented to the Court of Bishops this evidence, the manner in which it was taken, and we asked them, in a solemn and earnest manner, not to proceed any further with regard to these charges. And now, when we come back to this same Convention which instructed us to do this, and accomplish this very result, we say, we did what you told us to do, and it was effectual. And now gentlemen find fault with us for our taking it up to the highest Court in the country. Now, I come to the point. It is said here, that that opinion of the Bishops and of the action of this Diocese ought not to stand, because that investigation, made by the Committee of Investigation, was not a fair, thorough and an honest one. That is the question raised here to-night. That is the question raised by the gentleman from Trenton—precisely the question raised by the three Bishops—the integrity of the Diocese of New Jersey, and the fairness of that Committee. Sir, I thought it was an unworthy proceeding, on the part of those Bishops, their endeavor to cast reproach on this Committee. But they had no feeling in common with us; they were strangers, out-siders, and seized upon this plea because they thought it might serve their purpose. They were not working for right; but as lawyers for their cause. They did all they could to destroy the force of what the Committee had said to the Court; and after a full argument, (we not being heard in reply,) the House of Bishops, assembled in Burlington, solemnly decided, under the great responsibility of their official oaths, that the investigation by the Committee was satisfactory to the Church. And when we come back here and tell you that the Court of Bishops thus decided, gentlemen here say that notwithstanding this decision, we want another investigation—we want still a *trial*. And the honorable gentleman presents a resolution at this stage of the proceedings, in which he asks the Bishop to put the question to this Diocese, requesting him to demand a trial. When, where, and how? I ask the gentleman. How can he get a trial? In a civil court? This Convention ask the Bishop to

demand a trial? When, and where; upon what charges? whose charges? If any Christian man in this assembly thinks that Bishop Doane is guilty of crime or immorality, let him present him for trial. Let him take the Canon of the Church. He there finds that a Bishop may be presented for trial. Is there any other mode pointed out in the Church, in which he can have a trial? None other. And here I wish to call the attention of this Convention to what I have heard and hear again. The gentleman knows very well that all the proceedings of the Diocese in regard to this matter, have been upon the question of presentment. The Canon declares that a Bishop may be presented by the Convention, or by three Bishops; and we cannot procure a trial of a Bishop unless it is by a presentment, either through a Diocese or by three Bishops.

Now, the only question pending is filling up the blank with the names of the new Committee. When we look at the history of this matter, I think the Convention will see, first, that there is a great principle involved in this matter, and that it is highly probable that the same gentlemen composing the first Committee should be put in charge of this work, because they made a faithful investigation of this case before.

Secondly, the highest tribunal of the Church have examined that investigation and declared it to be satisfactory. The Presenting Bishops undertook to impeach the candor of that Committee, and assigned their reasons for believing that they acted with partiality, and their Report was not entitled to credit. There is not a man in this Convention who does not know the contrary, and the House of Bishops have so decided. And yet, it has been published to the world that this Committee was not a fair Committee, because some of them had their sons at the College, and some of them had let you have their money to build up the College. Sir, if they had read your heart as *we* have, they might easily have found that in all those holy ties which bind People, Clergy and Bishop together—they might have found that in twenty years faithful performance of duties, our confidence in you is not so easily destroyed. [*Something not heard.*] Shall I admit that because my two sons are entrusted to your care for education, I am not able to judge whether you have committed perjury? No, Sir. And now I say that without this impeachment of the gentlemen upon that Committee, and this Convention having solemnly decided upon two separate occasions that they were competent, I say that it is our duty, in investigating the other charges according to the directions of the Court of Bishops to which this whole matter was referred—it is our duty, I say, to appoint the same Committee.

HON. R. P. THOMPSON.—Having made a motion to strike out the names of the Committee, it is due to myself to say that I made this motion not from any want of confidence in the gentlemen named, but merely because it was asked of me by one of them, who himself desired to be excused from serving again, because other persons, it was believed, would be better. But I am satisfied that if consequences are to flow from it which my friends have predicted, and the Convention is to be influenced by what they have said, I ask leave to withdraw the motion.

THE BISHOP.—It now stands moved and seconded that the blank be filled with the names of the former Committee.

MR. HALSTED—I understand the Resolution now to be in the shape in which it was originally offered. It includes, therefore, two questions; one is to appoint a Committee, and the other is to include all the persons of the old Committee in the appointment. Now I wish to inform the Convention that one of the members, Mr. Wakefield, has removed out of the State. [*Here something was said, in substance, that it was not material, as a clause in the Resolution provides for filling vacancies.*] Mr. Halsted resumed: Premising, Sir, that I have personally a great respect for the gentlemen composing the Committee, I doubt, however, the expediency of the whole motion, and am opposed to it *in toto*.

It appears to me, that if I was called upon to decide what would be best for the peace of the Church, (I presume that we are all in favor of the peace of the Church,) as a conscientious man, I should say, if a Committee is to be raised, appoint a Committee who have expressed no opinion upon this subject; who have not become warm by any active participation in the matter; who have not, by the very fact that they have drawn out a report of the Bishop's innocence, become wedded to that opinion. We all know how very partial we are to our own opinions. It appears to me, therefore, that if the object the Convention have in view is to give satisfaction to the public, they ought to appoint a Committee who have not expressed an opinion on the subject at all.

The first gentleman who spoke, from the House of Prayer, gave as a reason why those gentlemen should be re-appointed, that the *victory* already achieved would be carried out. Now it really appears to me that that is the strongest reason why they should not be appointed. [*A sentence not heard.*]

REV. MR. SOUTHARD—The *victory* I had reference to was a triumph of the *truth*.

MR. HALSTED—It may be what *you* consider a victory of the truth, but different persons think differently as to what is the truth.

Now, to my mind, the very argument of the gentleman that it is to carry out their *victory* that the Committee are to do so, shows a state of feeling not consistent with a calm and simple endeavor to elicit truth.

MR. SOUTHARD—I said that if the same Committee were not appointed, I thought we should lose much of that *victory* which had already been won—that victory of *truth*; and I meant that we should lose it in this way: that by removing those gentlemen, we should reflect upon the fairness and the fullness of the investigation those gentlemen had made, so that you would deprive us of that victory which we won in the Court, when the Bishops said, your investigation is satisfactory to us.

MR. HALSTED—The gentleman assumes here that the three Bishops have impeached the character of that Committee, which is not the case; on the contrary, they expressly accorded to them all the high character which the Convention of this Diocese claim for them; and therefore, when the gentleman assumes that the character of those gentlemen has been impeached, he goes beyond the mark. Now, I do say, and I submit it to every person; I ask, would the report of a Committee, constituted as that Committee was, have the same effect

upon the public mind as the report of gentlemen totally unconnected with the Bishop, his College, or his debts? Would it have? I submit, without the least imputation against the honor of those gentlemen, that it could not. I say, then, that it is due to the Bishop, and due to the Church, that we should have a Committee who have not expressed an opinion upon this subject; and therefore I say it is for the good of the Church. If they want a Committee to make an investigation, let it be made by men who have not committed themselves by any preconceived opinion upon the subject.

Now, Sir, as to the second resolution. That resolution is that this Committee shall have power to appoint or to fill vacancies. I would ask, in what capacity is this Committee of Inquiry to act? Is it to act in a judicial or ministerial capacity? Is it to exercise any judgment whether those charges which have been presented have been proved or not? Am I to understand that the Committee of Inquiry are to act judicially? [*The Reporter missed a few words.*]

It is to investigate the charges and make up their opinion as to their truth, and to report to this Convention their decision. Now, if this Committee is a Judicial Committee, or to exercise in some measure judicial powers, to exercise their judgment upon matters brought before them, the motion to empower them to fill vacancies is illegal. It is a matter well understood by lawyers; ministerial authority may be delegated, but judicial authority cannot. Did ever a person hear that when a Judge was chosen, that Judge could delegate his powers to anybody else? No, never. Then I submit that this Convention have no authority whatever to empower this Committee to appoint any person to fill any vacancy. If this Committee is to be a Committee to act judicially, they may have confidence in certain gentlemen whom they may choose to nominate, while others might have no confidence in persons that this Committee might nominate. I know that it is a very common thing in our political moves, where we appoint some active men to do political work, to leave them to appoint others. [*A sentence lost.*]

I submit, therefore, that this resolution ought not to pass, for it is wholly illegal and improper. Now, Sir, my learned friend from Morristown, the honorable Senator, has submitted some views upon this subject which I cannot assent to. In the first place, he laid down the position that every person belonging to this Convention was necessarily bound by the acts of the Convention, and have no right to find fault with them. He said, suppose that in the absence of one of the members of a Legislative body a law should be passed, he is bound by it. Now, I submit to my honorable friend that that principle is not the one in question.

Suppose the Legislature undertook to pass a law which is in direct opposition to the Constitution; would he be responsible for it? If 40 Bishops declare a matter constitutional, if I do not believe it constitutional I have the right, as a man, to say so. Every man is free to judge for himself, according to the dictates of his reason, until there has been a judicial decision upon the point.

I believe the day will come when a majority of the Bishops in this country will so decide it. But, as it now remains here, we have a right to form our opinions; we are at liberty, if we find occasion, to

differ. I only say, then, to my friend from Morristown, I take a different view. We are not bound. We have a perfect right to express our dissent, not only from the adoption of the Report of the Committee, but from any action founded upon that Report. [*The closing sentence not heard.*]

Now, the reverend gentleman in his argument undertook to say that the four charges which have been referred to this Convention by the Court of Bishops, were known to the three Bishops before they made the original presentment, or were known to the persons who preferred the accusations. I do not know what authority the gentleman had to make that assertion. I know that some of those matters were brought to the attention of the three Bishops; but they declined to make charges upon them, because they had not been able to see the individual witnesses, and were not willing to adopt any statement, unless they could find reliable testimony. If they knew them all, it shows that they did not put them in, because such evidence could not be obtained then as they could rely upon as sufficient.

THE BISHOP—They say expressly that two were left out by accident; I say they were *designedly* left out.

MR. HALSTED—Well, it only makes the case stronger then. If these are new charges they ought to be examined by a new Committee, and not by those who have already decided that the Bishop is innocent. So far as any result is to be attained, I would quite as lief have those gentlemen as any others. It is not because I have any personal objection; nay, the contrary. But if you want a report which will have no weight upon the public mind, appoint these very men, and rest on their decision.

I do not, I cannot believe, that it is proper that gentlemen who stand in the relation that these gentlemen do towards the Bishop, should act in this case. But I have another remark to make. Several of the gentlemen (particularly the gentleman from Morristown,) have stated that the objection to this report was that it was not a fair report, made by independent men. One of the objections, and the main one, is, that it was not a *full* report. The Resolution or the Preamble before the Convention has undertaken to say that this Committee have made a full and honest inquiry into the allegations. Now, I deny it; I say that Committee did not make a full investigation. But yet it has been declared and reiterated over and over again, that that Committee made a full examination of all the charges. [*A few words not heard.*]

Now, I say, that this Report has been invoked over and over again as a full inquiry. Now, I refer to the Report to show that this Committee said that it was not a full examination. On page 26 it says:—*[The speaker here cited some expressions in the Report which could not be noted.]*

Now, I find fault with the Convention for having passed a Resolution asserting that that Committee did make a full investigation. Now here, in their Report, the Committee say very frankly and candidly, that they could make no full investigation; and yet it is reiterated on this floor, over and over again, that they did.

I want the truth to be heard, and their Report stated just exactly as the Committee stated it. Look at the Report, and you will find several instances where the Committee gave their reasons why they

could not make a full examination. When we are told that we ought to be satisfied—that there has been a full and satisfactory inquiry, we reply, Why, gentlemen, there could have been no full inquiry, and here is the evidence. We point to the fact that there were 38 witnesses, whose names were furnished to the Committee, and of these 38, but 5 were examined; and is this to be called a full examination?

MR. RYALL—I think we examined 27 or 28 witnesses.

MR. HALSTED—But they were not, at least only 5 of them, those on whom the presentment depended. They were witnesses who, as is shown by their testimony, knew nothing about the matters charged. They testified that they did not know. Now I repeat it, that there were more than 30 important witnesses who were not examined; and yet we are to be told that this was a full investigation.

MR. RYALL—All the witnesses named by you were subpoenaed, but I don't remember now how many of them appeared.

MR. HALSTED—There were only 5 out of the whole 38; and the reason why the persons who were subpoenaed did not appear before that Committee exists now: That that Committee was not invested with judicial authority; and these witnesses still hold themselves in readiness, as they have at all times, to go before the Court of Bishops and give their testimony.

I say, therefore, if you want a really full investigation of these charges, a different policy must be adopted. And I submit, if there is to be a Committee appointed, that, in the first place, the whole of the Committee ought to be directly appointed by the Convention, and not leave to a majority of the Committee to supply vacancies: and secondly, that the Committee ought to be composed of persons in no way connected with the Bishop or his institutions: and in the third place, that that Committee should be composed of a majority of those who are for the Bishop, and a minority of those against him. By this means we shall be more likely to get at the truth, and have a fair investigation of the charges.

MR. COURTLAND PARKER—I will not detain the Convention, Mr. President, long; for it seems to me that a great deal has been said and done through the day very irrelevant and unnecessary. A large amount of time has been consumed by reading the report, and with various honest and earnest opinions on the part of the Committee who made that Report. As to the ability, the good spirit and excellence with which they have done their duty—in this matter they may be perfectly right, but, it seems to me, that we have very little to do with it here; and it seems to me too, that in discussing the conduct of the gentlemen composing the investigating Committee, there is little profit. For my own part, I am free to say, that I have no charge, whatever, to bring against these gentlemen; that while there may be fears that the minute interest they have in defending the Bishop would at law because of challenge—the doctrine of the law being upon that point, that the minutest shade of interest will exclude a party from acting as judge—yet, that, with such men as these, their being trustees, patrons and creditors, are but trifles, lighter than air, and not to be regarded by us for one moment. These gentlemen will do as well for the purposes required of them as any other gentlemen. I have no doubt that they brought to their task a spirit of investigation suf-

ficient for all purposes desired by this Convention, and I suppose that there can be no question that they did what was required of them, honestly, impartially and fairly.

But, Mr. President, I rise for the purpose of placing before this Convention a proposition as an amendment of those which are now before them. I understand, that, the resolutions offered by the gentleman beside me (Mr. Rutherford) are not to be submitted. As to those resolutions, I am free to say that the proposition embodied by them is one which had struck my own mind previously, and I had not dreamed that it was in any wise objectionable as out of order.

The matter has been left with this Convention by the express request of the Bishop. He has placed it before us by his first address at the first Convention, and his second address here. I wish to avow that I am in favor still, and as much as ever, of this matter being regularly tried. I speak more freely upon this matter, because at last, after aspersions from gentlemen who should have been the last to impugn my motives, I believe, and am thankful so to believe, that in the mind of the man who is most concerned in this matter I stand clear of any insincerity, any hostility to him, and am thought only to exercise an honest difference of opinion. I am, at last, glad to believe that, with the same ideas I had before, with the same conviction, that a trial was the best thing for the Bishop, the Church and the world; the best thing for that world which you, Sir, and such as you, are desiring to correct. I shall not be charged with insincerity when I say, that while I believe this, I believe the Bishop innocent of the charges, and for that reason I do most earnestly yet desire that this Convention, even now, should retrace its steps.

I say, Sir, that it is, in my judgment, now the duty of this Convention to retrace their steps, and to counsel a resort to a canonical trial; and I submit, Mr. President, with that view, this Resolution, as an amendment, or in lieu of the one that has been placed before you, believing that it will meet the case, and at the same time be more acceptable than the one proposed before by the gentleman from Jersey City.

Mr. Parker then offered the following;

Resolved, That in the opinion of this Convention, the fair fame of the Bishop cannot be effectually rescued from the accusations against it, by any *ex parte* inquiry, however thorough, nor without a canonical trial.

THE BISHOP—This is worse than the other. I'll put no such resolutions. I'm a Bishop—I'm Bishop of this Diocese—I'm Bishop of this Diocese in this Convention, and I'll stand this no longer. I have been before the Court of Bishops. I took the course of that Court; and—I am here. But I will not put a resolution like this. What child's play! After all that has passed, I put a resolution retracting the whole course adopted; calling upon this Convention to say, that in their opinion, my fair fame needs a trial? This, after this Convention has resolved that a trial was unnecessary—have sent their Committee to prevent it—have actually succeeded in preventing it? I'll do nothing so utterly absurd.

I disclaim all idea of distrust as to the motives of the mover, and of the sincerity of the gentleman; but his resolution is, in effect, an un-

conditional censure. It is worse than that. It's an absurdity—a self-stultification.

I have heard much from a venerable gentleman here, about the Bishop's character being destroyed, and a trial being necessary to redeem it; and nothing but his gray hairs prevented me from stopping him. My character destroyed? and the public confidence in my integrity impaired? I deny that. I stand in the midst of a Diocese, I can very nearly say, united to a man. I stand in the midst of a Diocese, in which there is a tide of sentiment in my favor, which is overwhelming. For the last three months I have received tokens of their kindness, affection, and honor—evidence not to be mistaken, that I am welcome to their hearts and homes, more than ever before. The time has come to stop these resolutions, saying that the fair fame of the Bishop demands a trial. I'll hear no more about officers of the army and navy, and what they do. I am an officer myself—of Christ's army—of the Church militant here on earth; and know and feel what I ought to do. This mode of personal discussion and personal reflection here—I'll put up with it no longer. I challenge denial of any thing that I have said. I challenge any man to put his finger upon the smallest fraction of error in my estimate of my position, and of what my own fair fame demands. I defy the proofs to the contrary. I deny that there is any want of confidence in me. If I had not in my possession piles of letters, from men in every part of the United States, and from multitudes beyond the limits of this country, whose names are virtue and honor, expressing their sympathy and confidence, I might think otherwise. [*The Bishops concluding remark here, and something said by Mr. Halsted in reply to it, were not understood by the Reporter.*]

MR. C. PARKER—If I were disposed to say what many men in the same situation would, it would be, Sir, that you seemed to think you were consecrated Bishop, and made President of this Convention, for the purpose of having us do and say just what you regard as right, and nothing else. I have moved this resolution, not with the expectation of its being carried, but with the simple and solitary object of having a vote taken which should fairly and fully express the sentiments of myself and of those who think with me in the Diocese. But it seems, Mr. President, that though it be right and proper in this Convention to resolve that this Committee shall go for the purpose of submitting to the Court of Bishops, assembled under the Canon, whether it be just or right, or for the peace of God's Church, to go on with the trial—that it is not right or proper, and by no means to be permitted—that this Convention shall entertain a resolution to the contrary. That seems to be the conclusion of the whole matter. This is the real position of the Bishop, and of the majority of this Convention.

JUDGE OGDEN—I would ask the gentleman who has just taken his seat; How, at this time, can the trial of the Bishop go on? Where is the Court which is to try him?

In the first place, it is said by the three Bishops, that they are prepared to prove, fully and conclusively to establish their charges. But the House of Bishops, rightly regarding the rights of the Diocese, have decided that this Convention is the proper body, and that the Diocese should settle it. They have allotted to this Convention which has de-

cided upon the first charges, that this Convention now assembled in its special session, should investigate the new charges. That this may be done, it is proposed that a Committee should now be appointed to take charge of this business; and it is proposed to appoint the old Committee, which I am in favor of. But no matter who they are, this Committee. You appoint A., B. and C., and append to their appointment authority to fill up any vacancy, in order to have a quorum.

But, the witnesses, they say, will not go before this Committee to testify; and how is this Committee to investigate? Is that the way to bring charges against the Head of a Diocese? They say it is not invested with competent authority to try charges, this Convention. Is it not the same Convention which tried the charges before? And has not the House of Bishops decided that the action of this Convention was sufficient?

The gentleman from Trenton says he cannot go before this Committee, where he was summoned formerly, because the charges had been presented by those Bishops, and that the course taken by the Convention in appointing the Committee was contrary to the Canons and Constitution of the Church. But he is now told that the House of Bishops has decided that it was right. And then he changes his grammar, and says that we ought to leave off the old Committee and appoint a new set of men who will make an impartial investigation. What becomes of the constitutional question in his mind? It is not deniable—it is perfectly plain—that this proposed investigation of the charges by this Convention, in order that they should be settled, is right and proper, and that it is the only true course to be pursued. [*Several sentences of the speaker here could not be understood.*]

In appointing this Committee, I never will yield, that these gentlemen who have done their duty so well, shall be left off. [*There were several further remarks, which the Reporter was unable to note*]

HON. JAMES PARKER—The gentleman last up has been arguing a question which was not before us; and for myself, I have no objection to the gentlemen composing the old Committee being again entrusted with this business. All I said before was, that they had not examined the principal witnesses. It was their misfortune, not their fault; and if they are to act again, they ought to endeavor to examine the witnesses against, as well as those for the Bishop.

But, Sir, I do not rise for that purpose. I rise, Sir, in behalf of those whom I represent, to protest against the tyrannical conduct of the Bishop. The Bishop has not the authority to stop debate; I protest against his assumption of it. You have destroyed the freedom of debate, Sir. You refused to put a question offered by the gentleman before me—interrupted him in his remarks—and nothing, Sir, but my gray hairs, it seems, excused me from like interruption. You may consider me, for that matter, as young as you please. Anybody that came in and saw the Bishop speaking, would have thought him excited by something very uncommon. I protest against this attempt to arrest debate.

I have said it before, and I say it again, that the Convention has taken the wrong course to settle this question; and the more you evade the canonical trial, the more you admit that there is something wrong which you are ashamed to show, and afraid to have heard. I

do protest against this authority which the Bishop assumes, of stopping debate.

MR. HALSTED—Now, I have an amendment to move; and my amendment is, that the Committee to be appointed are to examine *all* charges against the Bishop and any additional ones that may be made. I have a charge, and it is one which the three Bishops refused to adopt; and I appeal to every man in this house if the charge is not correct. The charge is this? His conduct, while presiding over the Convention in this Diocese, has been discourteous, overbearing and tyrannical—wholly destitute of that propriety which should belong to a christian Bishop. I want to present that charge. For when resolutions have been respectfully offered to this Convention, that he should take upon himself to say, he will not put them—it ought not to be tolerated by the Church.

A motion to adjourn was here put and defeated.

Amid much confusion, and cries of “question” and “order” all over the house, Rev. Mr. Sherman took the floor, but could not proceed on account of the noise.

MR. JAMES PARKER—I move, Sir, that the Bishop is out of order. You are as disorderly a man as any body in this Convention.

REV. MR. PATERSON—I would ask the President if there is no way to have order.

MR. RUTHERFURD—No, Mr. Paterson; they wish to press the gag-law in a christian Convention. [*Confusion, and cries of “order” and “question.”*]

REV. MR. SHERMAN—I have had the floor now some time; but I don’t see much chance for the privilege which I supposed attached to it. However, I’m pretty much disposed to keep good-natured, and hold on, and when the noise is over, I shall proceed.

REV. MR. DUNN—You can’t be heard Sir; you can’t be heard.

MR. SHERMAN—Then I’ll speak louder. Mr President!—I have the floor. And now I insist upon the President of this Convention maintaining order, while I proceed. [*After a brief pause, quiet being restored, Mr. Sherman resumed.*]

The matter now before the house, as I understand it, is two-fold—the appointment of a Committee: and a reference to that Committee of certain matters—matters, which I maintain and urge, are not properly before this Convention. Let me be understood in this relation. The charges or specifications mentioned in the proposition are not, as I apprehend, fairly before this body for any present action. No one has preferred these charges here, and nobody stands pledged to us to substantiate them. They are the property of those who framed them, not ours. They do not belong to us, as subject matter at all. As a Convention we do not know them—they are altogether foreign and extraneous. If they are within the knowledge of individual members, they are so not from any formal introduction of them here, but solely from the fact that they have been seen outside. I submit, therefore, and I press the point, that they are subject matter which does not belong to this Convention at all. That such or similar specific charges have been made before a certain other body, by three of the Bishops, I make no question; but no party, as I can learn, has preferred these accusations here. They are not legitimately before us.

Their reference, therefore, to a Committee, for investigation, or any other action taken upon them here, in the present posture of the case, is not legitimate; and I again submit, can hardly be considered as legal, or right, or proper.

However, waiving that, I go on now to meet the question as it stands proposed in the Resolution entered, and shall rest upon other and general grounds the remarks I have to make.

I am entirely opposed to a reference of these, or of any other similar matters, to the Committee of Investigation which sat formerly upon the presentment made by the three Bishops, or to any other Committee constituted as that was, for these two reasons: First, Because I do not understand what *object* is contemplated by the reference.

It is not avowed by the mover, nor even hinted in the premises that it is with intention to the question of presenting or not presenting under the Canon of the General Convention; and I know not by what right this Convention can go into inquisition upon points touching the reputation and character of any individual in its membership, from the Bishop down to the humblest Presbyter or Deacon, except in direct and manifest connection with the single question of presentment. That question has not been raised nor avowed relatively to the investigation proposed. What the intention may be I venture not to guess. Judging from the past, I might fairly infer that it points to any thing but that. But I take the proposition in the shape in which it comes to me, and I assume this, as the first ground of my objection—the absence of any apparent *object*, as contemplated or intended to be compassed by this proposed investigation. There are those, perhaps, who have been admitted behind the scenes in this business, who can tell us what the purpose of this action is. For one, I confess myself in the dark. And I urge it, as a pertinent inquiry at this stage, which ought to be somehow settled before proceeding further—I ask in all fairness—What is the real *object* in instituting this investigation of the charges alluded to? Is it with reference to the simple question of presentment? or for what? We need, some of us at least, to be enlightened upon this point. It is an important feature of the case, and I wonder it has not been remarked upon before.

REV. MR. SOUTHARD—I would inform the gentleman, that the Committee will recommend a presentment of the Bishop, if they find occasion for it in investigating the charges. If they find them true, they intend to so report to the Convention, and the Convention can then present, if they choose.

REV. MR. SHERMAN—I am glad to be so informed, and from such a quarter. Whether the Committee will *find occasion* is another point. What has been said by the gentleman from Newark is *by authority*, I suppose; and with this assurance I rest my first objection, glad that this issue which was evaded when I pressed it upon this gentleman at the Convention in May, has at length been met. I hope, if there be occasion for presentment in this account, the Committee who failed, if they sought it, in the former reference, may be more fortunate in discovering it.

But I object to the proposed investigation on other grounds. I object to it, in the second place, because I am well satisfied that the action of any Committee of this Convention, not only in regard to

those specifications which are called "*new*," but in regard to any and all specifications charged by the three Bishops in their presentment—I am fully persuaded that the investigation of a Committee, acting as they must, will result in nothing. And as evidence, I point to what they have done already. They have certainly done nothing—except to interpose what has proved a bar in the way of a certain course which had been entered on under the Canon, to bring this whole business to a final issue. They did worse than nothing. They furnished to another Committee the materials which have been applied to block the judicial progress of the case, and throw it back upon us. [*Cries of "order"—a sentence not heard.*]

In one respect I must be allowed to differ from some with whom upon the main issue I agree. I would not seek to cast undue reflections upon the Committee as such, nor upon any of its members. They traversed, as far as they were able, the ground which was assigned them. They were, as I am fain to believe, honest, conscientious, and sincere in what they undertook to do. Under the peculiar circumstances which fettered and embarrassed their proceedings, they did perhaps the best that such a Committee could. And I do believe that the gentlemen who composed that Committee which served on the previous occasion, would serve as effectively in this behalf as any others we might choose to appoint. But after all, what can they do? Did they effect any thing for good in the former case? To what did their whole investigation then amount? After expending a large share of time and labor in that connection, they were only enabled, after a professed and intended traversing of the entire ground, they were only able to arrive at a partial and imperfect knowledge of the matters charged and referred to them. Their examination was, as from the nature of things it must be, and as from the nature of the case it was, *ex parte*. As evidence that a further action by the Committee as contemplated in the present movement, will prove of no avail toward a settlement of the business, I refer you to the former action upon the case, and would fix attention upon the main fact of what was the result of all their labors. They report to us—what? That in fulfillment of their appointment they have investigated all the matters referred to them by the Convention. And then they go on to tell us, in summing up their Report, not only that they had not found the alleged matters true, but they distinctly tell us further, that they have "*disproved*" all the charges. This is the language of their Report: all the charges have been "*disproved*."

Now, notwithstanding that clear declaration, and as showing that we may not look for conclusive results from the action of this Committee, nor repose full confidence in the conclusions they may reach, I stand here in my place, as a member of this Convention and a Presbyter of this Diocese, and say, upon my own responsibility, in the face of any and every declaration to the contrary, that I *know the truth*—yes, I *know* the truth of several counts in that indictment, which the Committee aver in their Report, have been "*disproved*." I say it, not as a matter of *opinion*, but of *fact*; I *know* it—from testimony unmis-takeable, which has come into my apprehension through the avenues of my bodily sense. [*A few sentences not heard*]

Now, nothing of good is to come from the action of this Committee

to be appointed. They may enter with all honesty and sincerity of purpose upon the task assigned them under the Resolution, should we pass it. They may use their best efforts in the business, and ply all the available sources of probable information, and yet the whole of their labor may be in vain, and their strength be spent for naught. It proved so in the former case, and no real good has grown out of their reported investigation. Things still continue as they were. The adoption of their Report by the Convention has not disposed of the presentment; for the Convention was incompetent—it had no judicial power. The whole action thus far is a signal failure. It has served to settle nothing. It has served to settle no single thing as charged in the presentment, nor to set it aside. No jot or tittle of the subject matter charged in that indictment has passed away or failed from the account. It remains there, and hangs over the accused Bishop of this Diocese, like a sword by a hair; and it will still hang there, until one of two issues shall have been reached—either a withdrawal of that presentment by the three Bishops who have made it, as provided by Canon, or a trial upon its merits by the Court charged with its final adjudication. Neither of these has taken place, and the end is not yet. And here we are, in a position any thing but desirable. And I stand here and say, that the issue which has been brought in by the intervention of the Committee whose Report is upon the table, has served to introduce a state of things most sadly to be deplored. I regret that issue of this business in all its relations, and on every account.

It is to be deplored, on account of its relations to the accused. It leaves him with grave charges hanging over his head, several of which are known to be true.

I deplore it, on account of the Church, and especially on account of its bearings upon the Church in this Diocese.

And I deplore it, most of all, because it fails, and must fail, to restore that confidence, and peace and harmony, which all should desire.

After all that has been done by by our Committees, and all that has been undertaken elsewhere, the whole subject reverts to us an open question, and every one is at liberty to form and entertain his own opinion. One sentiment obtains here, and another there; and in every respect the position we are in is most unfortunate.

How, then, are we to escape from the difficulty? That is the question now. Can any further action on our part—can any further reference to a Committee, or any action taken on their part, or proposed by them, better our position and relieve the case? I think not. Judging from what has been, I utterly distrust any and all action of that sort. It has only operated to make bad worse, with every step in its progress; and I am therefore opposed to the entire scope of the Resolution. I object to the appointment of this Committee, because I see no good that will come from its action. If there were any more probable result for good to come of it, any thing to be really gained, I would waive my objections at once, and readily accede to that which seems to be the prevalent sentiment in the Convention—that the charges alluded to (but not properly before us, for I would still urge that,) should be referred to the Committee; and that the whole matter

should be adjudicated by the subsequent decision upon it of this Convention. But no such issue as that can settle the business, or be received as satisfactory; because the decision of a Convention is without judicial force, and restricted in this relation to the bare question of presentment. Could it set the impress of final settlement upon charges, its action would suffice, and we would submit. But it cannot—it is powerless in this respect.

I can see no ultimate good, as I said before, that is to come from our further pursuit of already presented charges, or from their reference to a Committee. No real benefit can reasonably be expected to accrue from it. As in the former case, I verily believe the Committee were intent upon reaching the whole truth in regard of the allegations submitted to them, and sought all available information in the premises, or at least were ready to receive it, so I am confident in my belief, that to the extent of their ability, they would undertake an impartial investigation of these additional charges, if referred to them. I make no question of their integrity of motive, nor of their honesty of purpose in this behalf. But after all, their lack of knowledge as to the sources of information whence the charges made by others had been drawn; their neglect to go forth from the seclusion of their Committee room, in Burlington, to seek and search that they might find; the impediments which existed in several instances, and which were interposed in others, as bars upon their desired examination of important matters charged; and the peculiar circumstances in which they were placed, embarrassing throughout to their free proceeding; these and other causes, combined with the native difficulties of the whole business to render a strictly *full* investigation an almost impossibility. Their own manifest of the case, the voluminous Report of the Committee, shows most clearly that the examination was *ex parte*. A mere *fraction* of the evidence upon which the presentment rests, was all that the Committee reached. As an investigation, it was at the best partial and imperfect, and has served to settle nothing.

Such was the result from their former action. And I see no reason in the nature of things nor in any increased facilities for a thorough and full investigation of the matters now proposed,—I cannot see that the action of a Committee will be more successful now, than in the previous case. Is there, I ask, any more of likelihood that these charges will be conclusively disposed of? This we ought to well consider. [*A few words not heard.*]

Without speaking by authority, I conceive that I have a right to venture an *opinion*, that those who have already moved in this matter as presenters, have so fortified their position, and so secured to themselves the testimony upon which they rely, that it may remain shut up to their use. Except in one of them, (the last, I think it is,) the specifications in question contain no indications of the testimony. The Committee may search for it, but at the same time, I have reason to believe that their quest will be in vain.

And then the Report—that they have examined the matters, and have found them all “*disproved*”—a repetition of what they told us once before.

One word upon this matter of “*disproval*,” and I will detain the house no longer. What are we to understand by “*disproving*” certain charges? The Committee in their Report to the adjourned Con-

vention in June, speak definitely and say, "that none of the charges against the Bishop have been sustained." So far, so well. But they go on to say, "that on the contrary, they have been disproved, and are not true." What can they mean by such singular use of language? To *disprove* an allegation, I take to be a little different from the issue in point of fact that it remains *not proven*. There is a manifest distinction, and an important difference. If the Committee had simply said, that after a diligent and careful examination, (and they might as well have written "*partial*"—for such, by their own showing, it was, from necessity, though not of choice,) if they had simply said, they could arrive at no knowledge as to the truth of the matters charged, and stopped there, they would have spoken more to the point, and kept nearer to the line of accuracy. But they have compounded their account, and declare in their Report, which has gone upon the record as adopted here, that all those previous charges submitted to their investigation "have been *disproved*, and are not true." To prevent a second edition of their error, I repeat in this connection, that there are several grave matters charged in that indictment, (charges with which my name in no way stands connected,) which I *know* are not disproved, but are still literally and strictly true.

JUDGE OGDEN—That makes three times you've said it.

MR. SHERMAN—And I hope I am understood.

REV. MR. SOUTHARD—I desire that the principles, asserted by this Convention, should be maintained; and, so far as it is in my power, I would urge the course adopted, as the rule of action in this question before them—the rule of *duty*, before them. In the former action, it was regarded as an *insult* to the Bishops, that the Diocese had the exclusive right to act first upon the charges, and decide the question of presentment. It was carried up to an assembled Court; and that Court decided that we had done right.

We are now called on, not merely by our sense of duty, but by a recommendation of the Court of Bishops, to do this thing. And what is it but an *insult* and *contempt*, to evade it? We are *bound* to do what has been directed by this supreme authority. And yet, we are told, that, when the very Court, the authority to which this reference has been made, have asked of New Jersey, and directed this Convention to investigate these charges—we are told that, if a Committee is appointed, the witnesses, who profess to *know* so much, but will be sure not to tell it, will not appear. Yes; we are told, here, that these witnesses *will not appear*.

What does it mean? Does it mean that any man here, will refuse to tell what he *knows*, when the very authority which they profess to reverence, says, "*tell it*?" Sir, I would like to see the man, who will *dare*, when he has accused his Bishop, and affirms that he has *knowledge*, I would like to see the man, who *dares* to refuse his testimony. Let him take that position; and he shall abide by it.

MR. ARCHER GIFFORD—I wish to speak directly to the point. I feel it my duty to submit to the decision (if it may be so termed) of the House of Bishops, as one of the constituted authorities of the Church. I do so as a lover of good order and the peace of society. And yet, while, in the present instance, I submit to this authority, or this exercise of it, I feel much as Galileo did, when compelled to accuse himself, on his knees, of *heresy*, because he had advocated the

Copernican system of the planets revolving around the sun ; and who could not help exclaiming, when he arose, "*and yet it does move !*"

I cannot be satisfied that the Committee have kept within their province, when they attempt to join in their Report of the proceedings of the House of Bishops, the recommendation of that body to this Convention, to execute a certain pledge that they will proceed in the investigation of the new charges that have been made, whether they involve criminality or misbehaviour. This I do not stop to consider. I have never read these charges ; and I do not profess to know about them. I have never acted with any party. [*A member here interrupted the speaker, with an allusion which was unintelligible to the reporter.*] Some years ago, I am ready to admit, I was one of a number of gentlemen who consulted together in private as to whether it was not demanded by the position of things, that our Bishop should be presented. I did not then think it advisable, and I so expressed my opinion. As there is no pledge of secrecy which binds me in regard to what took place at that meeting, I might say something further respecting this, but I do not think it now necessary nor altogether in order. What I would say is this: I do not wish to be considered as acting with any party. I stand upon my own individuality in this matter, and look only upon what I consider to be the correct mode of proceeding, and without any reference to the guilt or innocence of the Bishop. The Committee have embodied a matter in their Report, which they were not charged with by the Convention ; and however I may feel bound to accept the Report of the Committee, I cannot agree to accept it with that part included which relates to the pledge *further to investigate*. Neither can I believe that the House of Bishops have been constituted with any power to recommend to this Convention such a course. Their business was and is to TRY. This Convention can only *present*. These last charges are before the House of Bishops on a presentment made by three of the Bishops, according to the Canon. And what power can they have, to recommend to us, to do what it is their peculiar duty to perform, as directed by the Canon ?

As to the appointment of the same Committee, there would appear to be some indelicacy, in committing another and distinct set of charges to them for investigation ; especially if they are to proceed as they have done with the first charges. They have acted the part of a jury to *try* ; and, (to use their own language,) "*found a verdict.*" For this they had no commission. And now, as it were, without going out of the jury-box, they are to proceed upon an unauthorized recommendation of the Bishops—one for which no precedent or direction can be found—and as it were feared to select any other men with whom to trust our Bishop's character. Whatever respect we may entertain for these gentlemen of the Committee, it may be looked on with suspicion. The public have to be satisfied. That is the great ordeal at last ; and we must act with proper deference to it. But I have taken up more time than I intended, and I submit the matter to the good sense of the Convention.

THE BISHOP—The question will now be taken upon the resolution moved by the gentleman from Elizabethtown. The proposed amendment having been withdrawn, it stands now as it was originally offered, including the names of the old Committee.

The resolution was then read, as follows :

"Resolved, That the new matters contained in the presentment read before that Court, be referred to James Potter, J. H. Wakefield, C. M. Harker, D. B. Ryall, T. H. Whitney, Henry McFarlan and J. L. McKnight, with instructions to proceed with diligence and with all convenient dispatch, to make a full investigation of the new matters contained in the paper aforesaid, and that they report to this Convention."

HON. JAMES PARKER—I move to amend it, Sir, by adding, after what is said in reference to "the new matters"—*and all other matters which were not examined in the first presentment.*

MR. HALSTED—I second that amendment. [*Some further remarks were made by Mr. H., and by another member, which could not be heard amid the confusion.*]

MR. PARKER—My amendment, as written, reads—

"And also all other matters in the last presentment, not already examined into by that Committee."

The yeas and nays being called for on adopting the proposed amendment, the Secretary called the roll by orders. The result was as follows:

Of the Clergy—Aye, 0; No, 21; Declined, 2.

Of the Laity—Aye, 8; No, 21.

MR. HALSTED—I did not fully understand the amendment of the gentleman from Amboy; it didn't go far enough; and I now offer the following:

"And, also, all other charges which shall be presented to said Committee by any responsible person."

I move this as an amendment.

MR. THOMPSON—Has not the motion just put by the Bishop settled the question, that a large majority (if I understand the vote) are in favor of the resolution as proposed? This is the view I take of it. And besides, the preamble, which contains the decision of the Court under which we are called upon to act, only specifies certain particular points. It is in relation to the four charges which have not been investigated, and nothing else.

MR. J. W. CONDIT—The amendment is not in order; for this is not a Special Convention, and it is not according to the call of the Bishop. It is out of order.

MR. HALSTED—I don't want to press it, if the Convention is set on having another investigation of charges against the Bishop. They have appointed the Committee, to suit themselves, and have taken good care not to put any of the minority in the Convention on it, lest they should not have everything their own way.

MR. RYALL—We could not appoint *you*. The gentleman is disqualified, because he is one of the Trustees of the College. The gentleman ought to be consistent.

[*Some few words were added by Mr. Halsted, which, amid cries of "question," were not understood.*]

THE BISHOP—The vote will now be taken upon the original motion.

The question was taken *viva voce*, and declared by the Chair to be carried by sound.

MR. CORTLANDT PARKER—Mr. President, upon what are we voting?

THE BISHOP—On the resolution.

MR. PARKER—I was not aware of that. I thought the vote was on the amendment last offered. I did not understand it to be withdrawn.

THE BISHOP—The amendment was not in order. The question was upon adopting the resolution, and was so announced.

MR. PARKER—I did not understand it. And I wish the privilege of recording my vote on the resolution, and therefore call for a division and the *Ayes* and *Noes*.

SEVERAL MEMBERS—It is too late; it is too late!

REV. MR. SOUTHARD—Better take the *Noes* without the *Ayes*, if we take them at all.

MR. PARKER—The *Noes* without the *Ayes*! A fair proposition, truly! Well done for you, Sir—the canonical, legal expounder here—who will have everything done in strict accordance with law and canon! Now you wish the vote taken, if at all, by the canonical mode of only showing the strength of *one side*. And you oppose taking the vote at all! I should like to know if the minority in this Convention are to be accorded any rights—if even the poor right of exhibiting their vote is to be accorded them.

REV. MR. SOUTHARD—So far from not according to the minority their rights, the majority of this Convention have shown the utmost generosity to the minority. Have we not listened, Sir, in patience, these six hours, to the speeches of the minority—this tiresome, useless, prosy discussion? And now the minority complain that their rights are denied them!

MR. C. PARKER.—Well done, Sir, again! Well done! this complaint about losing time, from a gentleman who has the idea that he argues his case with such consummate ability, that he must inflict on this Convention, as he did this morning, a two hours reading of his long mis-called argument before the Court of Bishops—a paper long ago printed and in the hands, in common with the public, of every person in this house. Well done! to talk of generosity to the minority, when we stand upon this floor with the *right* of speech—a right, as good as that of any man living, in whatever relation.

I say that the minority of this Convention are not accorded their rights, if the course proposed be pursued, and I ask whether this right of recording our vote when we misapprehended the question taken, is to be denied to us?

HON. MR. MILLER—I should like to know what right the gentleman has? The question has been taken, and the vote is declared. He has no right now, to a vote by Orders.

MR. PARKER—I ask the gentlemen, whether, in the distinguished body of which he is a member, if a senator, immediately upon the declaration of a vote, asserts that he misapprehended the question voted upon, and asks a division, or the privilege of declaring his vote, Will it be denied him?

MR. MILLER—Certainly, Sir, it is every day's practice.

MR. PARKER—I have a better opinion of the courtesy of the Senate.

After some more remarks from Mr. Miller, the question was taken by orders, with the following result: of the Clergy, aye, 23; no, 0; declined, 3: of the Laity, aye, 21; no, 8; divided, 1.

THE BISHOP.—The second of the Resolutions is now the question in order.

A MEMBER—Let us know what it is. I don't know what the

second Resolution is about. Why isn't it read, as is customary in such cases? [*Cries of "question."*]

The second part of the Resolutions was read, as follows:

"*Resolved*, That the Committee have power to fill any vacancy occurring among its members."

The *yeas* and *nays* were called, and resulted as follows: of the Clergy, aye, 24; no, 3; declined, 1: of the Laity, aye, 22; no, 7.

MR. CHETWOOD—The question having been carried on the second resolution, I suppose the other is now in order.

THE BISHOP—It is moved, That when this Convention adjourns, they adjourn to meet in this place, at 10 o'clock, A. M., on the 1st day of December next.

The Secretary moved to amend, by substituting "in St. Mary's Church, Burlington." The Resolution as amended, was then put and carried *viva voce*.

MR. J. J. CHETWOOD—I think I have the privilege of correcting a false statement which has gone forth through the press, which reflects both upon me and this Convention. I wish to read an article in the Episcopal Recorder—the Police Gazette of the Church. I refer to the number of that paper in which is the following—[*Mr. C. here read an article from some paper.*]

I now, upon my own free motion, say that this is untrue. I never made any arrangement—never understood any arrangement—and knew nothing of what is here stated. I remained here, and voted, as it is put in the journal. I pronounce that article is every word of it false.

REV. MR. SHERMAN—Don't let the amiable gentleman from Elizabethtown be too fast. In what relates to *himself*, he may settle his own affairs in any way he chooses. But he goes too far; for there is truth in the statements made in that article, and I call upon the Rev. Mr. Rose, whose name is recorded as having voted, to say whether he was not at the time at home in his bed. He has said so, and will confirm the statement if he is present.

MR. CHETWOOD—I believe I have the person who wrote that article now under my eye; and I say that he has been guilty of a false and malicious statement.

MR. SHERMAN—If the gentleman refers to me in his remark, I beg leave to say that he may believe what he chooses; but I suppose I know a little about this. I have not avowed myself as the author of the article in question, nor do I intend to assume responsibility for it. The gentleman is guessing, after all, if he attributes the thing to me.

MR. CHETWOOD—You have not disavowed it.

MR. SHERMAN—Neither do I intend to do that, till I think I have proper occasion to. It's soon enough to fix it upon me when I have adopted its authorship. I wish it understood, and I beg the gentleman to observe, that I have not acknowledged the authorship of that article. I simply affirm that a certain statement it makes is so, however he may pronounce it to be false. And I don't suppose it follows as a matter of course, because I insist upon a certain fact, that all the vagrant children of the Press, which are not otherwise fathered, are to be palmed off on me. Indeed, I may say, these matters are not in my line. [*Much confusion. and many leaving the house.*]

MR. CHETWOOD—I have *fixed* this thing where it belongs, and that's all I wanted. I am satisfied to let it rest where it is.

MR. SHERMAN—If the gentleman is satisfied with his mistake, very well. He is entirely welcome to it, and to anything else of this sort. I consider this whole matter as irregular, and I shall say no more.

MR. CHETWOOD—I don't think you'd better; you'll get deeper in the mire if you do. [*Many of the members leaving and much noise, in which the remaining words of Mr. C. were lost.*]

The House was called to order, and after the customary devotions by the Bishop, the Convention adjourned at about 11 o'clock, to meet in St. Mary's Church, Burlington, on Wednesday, the 1st of December, at 10 o'clock A. M.

Appendix.

As reference is frequently made in the foregoing REPORT to the CANON passed in General Convention, at Philadelphia in Oct. 1844, the whole is here appended :

CANON III. OF THE TRIAL OF A BISHOP.

[*The former Canon on this subject was the fourth of 1841.*]

SECTION 1. The trial of a Bishop shall be on a Presentment in writing, specifying the offense of which he is alleged to be guilty, with reasonable certainty as to time, place, and circumstances. Such Presentment may be made for any Crime or Immorality, for Heresy, for Violation of the Constitution or Canons of this Church, or of the Church in the Diocese to which he belongs. Said Presentment may be made by the Convention of the Diocese to which the accused Bishop belongs, two-thirds of each order present concurring: *Provided*, that two-thirds of the Clergy entitled to seats in said Convention be present: and *Provided also*, that two-thirds of the Parishes canonically in union with said Convention be represented therein; and the vote thereon shall not in any case take place on the same day on which the resolution to Present is offered; and it may also be made by any three Bishops of this Church. When made by the Convention, it shall be signed by a Committee of Prosecution, consisting of three Clergymen and three laymen, to be appointed for that purpose; and when by three Bishops, it shall be signed by them respectively, in their official characters.

SECTION 2. Such Presentment shall be addressed "To the Bishops of the Protestant Episcopal Church in the United States," and shall be delivered to the Presiding Bishop, who shall send copies thereof without delay to the several Bishops of this Church, then being within the territory of the United States: *Provided*, that if the Presentment be made by three Bishops, no copies shall be sent to them: and *Provided further*, that if the Presiding Bishop be the subject of the Presentment, or if he be one of the three Bishops presenting, such Presentment shall be delivered to the Bishop next in seniority, the same not being one of the three presenting; whose duty it shall be, in such case, to perform all the duties enjoined by this Canon on the Presiding Bishop. Upon a Presentment made in either of the modes pointed out in Section 1, of this Canon, the course of proceeding shall be as follows:

SECTION 3. The Presiding Bishop shall, without delay, cause a copy of the Presentment to be served on the accused, and shall give notice, with all convenient speed, to the several Bishops then being within the territory of the United States, appointing a time and place for their assembling together; and any number thereof, being not less than seven, other than the Bishops presenting, then and there assembled, shall constitute the Court for the trial of the accused: he shall also, at the same time, cause at least thirty days' notice of the time and place of meeting to be given, both to the accused, and to the parties presenting him, by a Summoner to be appointed by him; and shall also call on the accused by a written summons to appear and answer. The place of trial shall always be within the Diocese in which the accused Bishop resides. If the accused Bishop appear, before proceeding to trial he shall be called on by the Court to say whether he is guilty or not guilty of the offense or offenses charged against him; and on his neglect or refusal, the plea of *not guilty* shall be entered for him, and the trial shall proceed: *Provided*, that, for sufficient cause, the Court may adjourn from time to time: and *Provided also*, that the accused shall at all times during the trial have liberty to be present, to produce his testimony, and to make his defense.

SECTION 4. When the Court proceeds to trial, some officer authorized by law to administer oaths, may, at the desire of either party, be requested to administer an oath

or affirmation to the witnesses, that they will testify the truth, the whole truth, and nothing but the truth, concerning the matters charged in the Presentment, and the testimony of each witness shall be reduced to writing. And in case the testimony of any witness whose attendance on the trial, cannot be obtained, is desired, it shall be lawful for either party, at any time after notice of the Presentment is served on the accused, to apply to the Court, if in session, or if not, to any Bishop, who shall thereupon appoint a Commissary to take the deposition of such witness. And such party, so desiring to take the deposition, shall give to the other party, or some one of them, reasonable notice of the time and place of taking the deposition, accompanying such notice with the interrogatories to be propounded to the witness; whereupon it shall be lawful for the other party, within six days after such notice, to propound cross-interrogatories; and such interrogatories and cross-interrogatories if any be propounded, shall be sent to the Commissary, who shall thereupon proceed to take the testimony of such witness, and transmit it, under seal, to the Court. But no deposition shall be read at the trial unless the Court have reasonable assurance that the attendance of the witness cannot be procured, or unless both parties shall consent that it may be read.

SECTION 5. The Court having fully heard the allegations and testimony of the parties, and deliberately considered the same, after the parties have withdrawn, shall declare respectively, whether, in their opinion, the accused be guilty or not guilty of the charges and specifications contained in the Presentment, in the order in which they are set forth; and the declaration of a majority of the Court being reduced to writing and signed by those who assent thereto, shall be considered as the judgment of the said Court, and shall be pronounced in the presence of the parties, if they choose to attend. And if it be that the accused is guilty, the Court shall, at the same time, pass sentence, and award the penalty of Admonition, Suspension, or Deposition, as to them the offense or offenses proved may seem to deserve: *Provided*, that if the accused shall, before sentence is passed, show satisfactory cause to induce a belief that justice has not been done, the Court, or a majority of its members, may, according to a sound discretion, grant a re-hearing; and in either case, before passing sentence, the accused shall have the opportunity of being heard, if he have aught to say in excuse or palliation: *Provided*, that the accused shall not be held guilty unless a majority of the Court shall concur, in regard to one or more of the offenses charged, and only as relates to those charges in which a majority so concur.

SECTION 6. If the accused Bishop neglect or refuse to appear, according to the summons of the Court, notice having been served on him as aforesaid, except for some reasonable cause, to be allowed by the said Court, they shall pronounce him to be in *contumacy*; and sentence of Suspension from the Ministry shall be pronounced against him for contumacy by the Court; but the said sentence shall be reversed, if, within three calendar months, he shall tender himself ready, and accordingly appear, and take his trial on the Presentment. But if the accused Bishop shall not so tender himself before the expiration of the said three months, the sentence of Deposition from the Ministry shall be pronounced against him by the Court. And it shall be the duty of the Court, whenever sentence has been pronounced, whether it be on trial or for contumacy, to communicate such sentence to the Ecclesiastical authority of every Diocese of this Church; and it shall be the duty of said Ecclesiastical authorities to cause such sentence to be publicly read to the Congregations of each Diocese by the respective Ministers thereof.

SECTION 7. All notices and papers contemplated in this Canon, may be served by a Summoner or Summoners, to be appointed by the Bishop to whom the Presentment is made, or by the Court, when the same is in session; and the certificate of any such Summoner shall be evidence of the due service of a notice or paper. In case of service by any other person, the fact may be proved by the affidavit of such person. The delivery of a written notice or paper to a party, or the leaving it at his place of residence, shall be deemed a sufficient service of such notice or paper.

SECTION 8. The accused party may have the privilege of appearing by counsel, and in case of the exercise of such privilege, but not otherwise, those presenting shall have the like privilege.

SECTION 9. If at any time, during the session of any General Convention, any Bishop shall make to the House of Bishops a written acknowledgment of his unworthiness or criminality in any particular, the House of Bishops may proceed, without trial, to determine by vote, whether the said offending and confessing Bishop shall be admonished, or be suspended from his office, or be deposed; and the sentence thus determined by a majority of the votes of the House of Bishops, shall be pronounced by the Bishop presiding, in the presence of the said House of Bishops, and entered on the Journal of the House, and a copy of the said sentence, attested by the hand and seal of the Presiding Bishop, shall be sent to the said Bishop, and to the Standing Committee of his Diocese, and to the Ecclesiastical authority of every Diocese of this Church; and it shall be the duty of said Ecclesiastical authorities to cause such sentence, unless it be the sentence of admonition, to be publicly read to the Congregation of each Diocese, by the respective Ministers thereof.

SECTION 10. Any Bishop of this Church not having Ecclesiastical jurisdiction, shall be subject to Presentment, trial, and sentence, as hereinbefore provided, but shall not be included in any other provision of this Canon.

SECTION 11. Canon IV. of 1841 is hereby repealed.